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The General Statutes of the State of Florida

Prepared under authority of
and adopted by
The Legislature of the State of Florida

B. S. Liddon, T. F. West, J. C. B. Koonce,
Commissioners.

St. Augustine, Flo.:
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1906

p. I – XII, including title-page and Table of divisions and titles, and p. [969] – 1841, including Fourth and Fifth Division, are wanting in this volume.

THE CONSTITUTIONS

— OF —

THE STATE OF FLORIDA

— AND OF —

THE UNITED STATES.

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1906
Div. 1-3

NOTE OF EXPLANATION.

Chapter 5372, Acts of 1905, required of the Revision Commissioners to prefix to these General Statutes an indexed copy of the Constitution of the State of Florida *"and"* its amendments. The Commissioners did not feel authorized under this Act to prefix the Constitution *"as amended,"* and this will explain why the same appears in the form it does.

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Constitution of the State of Florida.

ADOPTED BY THE CONVENTION OF 1885; WENT INTO EFFECT JANUARY 1, 1887.

PREAMBLE.

We, the People of the State of Florida, grateful to Almighty God for our constitutional liberty, in order to secure its blessings and to form a more perfect government, insuring domestic tranquillity, maintaining public order, and guaranteeing equal civil and political rights to all, do ordain and establish this Constitution.

DECLARATION OF RIGHTS.

Section 1. All men are equal before the law, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing happiness and obtaining safety.

Section 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the citizens, and they have the right to alter or amend the same whenever the public good may require it; but the paramount allegiance of every citizen is due to the Federal Government, and the people of this State have no power to dissolve its connection therewith.

Section 3. The right of trial by jury shall be secured to all, and remain inviolate forever.

Section 4. All courts in this State shall be open, so that every person for any injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice shall be administered without sale, denial or delay.

Section 5. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of, or inconsistent with the peace or moral safety of the State or society.

Section 6. No preference shall be given by law to any church, sect or mode of worship, and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination, or in aid of any sectarian institution.

Section 7. The writ of habeas corpus shall be grantable speedily and of right, freely and without cost, and shall never be suspended unless, in case of rebellion or invasion, the public safety may require its suspension.

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Section 8. Excessive bail shall not be required, nor excessive fines be imposed, nor cruel or unusual punishment or indefinite imprisonment be allowed, nor shall witnesses be unreasonably detained.

Section 9. All persons shall be bailable by sufficient sureties, except for capital offences, where the proof is evident or the presumption great.

Section 10. No person shall be tried for a capital crime or other felony, unless on presentment or indictment by a grand jury, except as is otherwise provided in this Constitution, and except in cases of impeachment, and in cases in the militia when in active service in time of war, or which the State, with the consent of Congress, may keep, in time of peace.

Section 11. In all criminal prosecutions the accused shall have the right to a speedy and public trial, by an impartial jury, in the county where the crime was committed, and shall be heard by himself, or counsel, or both, to demand the nature and cause of the accusation against him, to meet the witnesses against him face to face, and have compulsory process for the attendance of witnesses in his favor, and shall be furnished with a copy of the indictment against him.

Section 12. No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken without just compensation.

Section 13. Every person may fully speak and write his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libel the truth may be given in evidence to the jury, and if it shall appear that the matter charged as libelous is true, and was published for good motives, the party shall be acquitted or exonerated.

Section 14. No person shall be compelled to pay costs except after conviction, on a final trial.

Section 15. The people shall have the right to assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Section 16. No person shall be imprisoned for debt except in cases of fraud.

Section 17. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed.

Section 18. Foreigners shall have the same rights as to the ownership, inheritance and disposition of property in this State as citizens of the State.

Section 19. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party has been duly convicted, shall ever be allowed in this State.

Section 20. The right of the people to bear arms in defense of themselves and the lawful authority of the State, shall not be infringed, but the legislature may prescribe the manner in which they may be borne.

Section 21. The military shall in all cases and at all times be in strict subordination to the civil power.

Section 22. The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated, and no warrants issued but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

Section 23. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or confession in open court, and no conviction for treason shall work corruption of blood or forfeiture of estate.

Section 24. This enunciation of rights shall not be construed to impair or deny others retained by the people.

ARTICLE I.

BOUNDARIES.

The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee river; thence down the middle of said river to its confluence with the Flint river; thence straight to the head of the St. Marys river; thence down the middle of said river to the Atlantic ocean; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning.

ARTICLE II.

DISTRIBUTION OF POWERS.

The powers of the government of the State of Florida shall be divided into three departments—legislative, executive and judicial; and no person properly belonging to one of the departments shall exercise any powers appertaining to either of the others, except in cases expressly provided for by this Constitution.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Section 1. The legislative authority of this State shall be vested in a senate and a house of representatives, which shall be designated, "The Legislature of the State of Florida," and the sessions thereof shall be held at the seat of government of the State.

Section 2. The regular sessions of the legislature shall be held biennially, commencing on the first Tuesday after the first Monday in April, A.D. 1887, and on the corresponding day of every second year thereafter; but the governor may convene the same in extra session by his proclamation. Regular sessions of the legislature may extend to sixty days, but no special session convened by the governor shall exceed twenty days.

Section 3. The members of the house of representatives shall be chosen biennially, those of the first legislature on the first Tuesday after the first Monday in November, A. D. 1886, and thereafter on the corresponding day of every second year. (Amended in 1890—see page 37, post—and further amended in 1896—see page 39, post.)

Section 4. Senators and members of the house of representatives shall be duly qualified electors in the respective counties and districts for which they were chosen. The pay of members of the senate and house of representatives shall not exceed six dollars a day for each day of session and mileage to and from their homes to the seat of government, not to exceed ten cents a mile each way, by the nearest and most practicable route.

Section 5. No senator or member of the house of representatives shall, during the time for which he was elected, be appointed or elected to any civil office under the Constitution of this State, that has been created, or the emoluments whereof shall have been increased, during such time.

Section 6. Each house shall judge of the qualifications, elections and returns of its own members, choose its own officers, and determine the rules of its proceedings. The senate shall, at the convening of each regular session thereof, choose from among its own members a permanent president of the senate, who shall be its presiding officer. The house of representatives shall, at the convening of each regular session thereof, choose from among its own members a permanent speaker of the house of representatives, who shall be its presiding officer. Each house may punish its own members for disorderly conduct; and each house, with the concurrence of two-thirds of all its members present, may expel a member.

Section 7. No person holding a lucrative office or appointment under the United States or this State shall be eligible to a seat in the legislature of this State.

Section 8. The seat of a member of either house shall be vacated on his premanent change of residence from the district or county from which he was elected.

Section 9. Either house during the session may punish by fine or imprisonment any person not a member who shall have been guilty of disorderly or contemptuous conduct in its presence, or of a refusal to obey its lawful summons, but such imprisonment shall not extend beyond the final adjournment of the session.

Section 10. Either house shall have power to compel the attendance of witnesses upon any investigations, held by itself, or by any of its committees; the manner of the exercise of such power shall be provided by law.

Section 11. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the presence of absent members in such manner and under such penalties at it may prescribe.

Section 12. Each house shall keep a journal of its own proceedings, which shall be published, and the yeas and nays of the members of either house on any question shall, at the desire of any five members present, be entered on the journal.

Section 13. The doors of each house shall be kept open during its session, except the senate while sitting in executive session; and neither shall, without the consent of the other, adjourn for more than three days, or to any other town than that in which they may be holding their session.

Section 14. Any bill may originate in either house of the legislature, and after being passed in one house may be amended in the other.

Section 15. The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Florida."

Section 16. Each law enacted in the legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be amended or revised by reference to its title only; but in such case the act, as revised, or section, as amended, shall be re-enacted and published at length.

Section 17. Every bill shall be read by sections on three several days in each house, unless, in case of emergency, two-thirds of the house where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journal of each house; Provided, That any general revision of the entire laws embodied in any bill shall not be required to be read by sections upon its final passage, and its reading may be wholly dispensed with by a two-thirds vote; and a majority of the members present in each house shall be necessary to pass every bill or joint resolution; and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the secretary of the senate and the clerk of the house of representatives. (Amended at general elction in 1896, see page 38, post.)

Section 18. No law shall take effect until sixty days from the final adjournment of the session of the legislature at which it may have been enacted, unless otherwise specially provided in such law.

Section 19. Accurate statements of the receipts and expenditures of the public money shall be attached to and published with the laws passed at every regular session of the legislature.

Section 20. The legislature shall not pass special or local laws in any of the following enumerated cases: that is to say, regulating the jurisdiction and duties of any class of officers, except municipal officers, or for the punishment of crime or misdemeanor; regulating the practice of courts of justice, except municipal courts; providing for changing venue of civil and criminal cases; granting divorces; changing the names of persons; vacating roads; summoning and empaneling grand and petit juries, and providing for their compensation; for assessment and collection of taxes for State and county purposes; for opening and conducting elections for State and county officers, and for designating the places of voting; for the sale of real estate belonging to minors, estates of decedents, and of persons laboring under legal disabilities; regulating the fees of officers of the State and county; giving effect to informal or invalid deeds or wills; legitimizing children; providing for the adoption of children; relieving minors from legal disabilities; and for the estalishment of ferries.

Section 21. In all cases enumerated in the preceding section all laws shall be general and of uniform operation throughout the State, but in all cases not enumerated or excepted in that section, the legislature may pass special or local laws; Provided, That no local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least sixty days prior to the introduction into the legislature of such bill, and in the manner to be provided by law. The evidence that such notice has been published shall be established in the legislature before such bill shall be passed.

Section 22. Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.

Section 23. Lotteries are hereby prohibited in this State.

Section 24. The legislature shall establish a uniform system of county and municipal government, which shall be applicable, except in cases where local or special laws are provided by the legislature that may be inconsistent therewith.

Section 25. The legislature shall provide by general law for incorporating such educational, agricultural, mechanical, mining and other useful companies or associations as may be deemed necessary. (Amended at general election in 1900. See page 41, post.)

Section 26. Laws shall be passed regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult or other improper practice.

Section 27. The legislature shall provide for the election by the people or appointment by the governor of all State and county officers not otherwise provided for by this Constitution, and fix by law their duties and compensation.

Section 28. Every bill that may have passed the legislature shall, before becoming a law, be presented to the governor; if he approves it he

shall sign it, but if not he shall return it with his objections to the house in which it originated, which house shall cause such objections to be entered upon its journal, and proceed to reconsider it; if, after such reconsideration, it shall pass both houses by a two-thirds vote of members present, which vote shall be entered on the journal of each house, it shall become a law. If any bill shall not be returned within five days after it shall have been presented to the governor (Sunday excepted) the same shall be a law, in like manner as if he had signed it. If the legislature, by its final adjournment prevent such action, such bill shall be a law, unless the governor, within ten days after the adjournment, shall file such bill, with his objections thereto, in the office of the secretary of state, who shall lay the same before the legislature at its next session, and if the same shall receive two-thirds of the votes present it shall become a law.

Section 29. The house of representatives shall have the sole power of impeachment; but a vote of two-thirds of all members present shall be required to impeach any officer; and all impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present. The senate may adjourn to a fixed day for the trial of any impeachment, and may sit for the purpose of such trial whether the house of representatives be in session or not, but the time fixed for such trial shall not be more than six months from the time articles of impeachment shall be preferred by the house of representatives. The chief justice shall preside at all trials by impeachment except in the trial of the chief justice, when the governor shall preside. The governor, administrative officers of the executive department, justices of the supreme court, and judges of the circuit court shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment according to law.

Section 30. Laws making appropriations for the salaries of public officers and their current expenses of the State shall contain provisions on no other subject.

Section 31. The legislature shall elect United States senators in the manner prescribed by the congress of the United States and by this Constitution.

Section 32. The repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment.

Section 33. No statute shall be passed lessening the time within which a civil action may be connected on any cause of action existing at the time of its passage.

Section 34 added to this article at general election in 1898, see page 41, post.)

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Section 1. The supreme executive power of the State shall be vested in a chief magistrate, who shall be styled the governor of Florida.

Section 2. The governor shall be elected by the qualified electors of the State at the time and places of voting for members of the legislature, and shall hold his office for four years from the time of his installation, but shall not be eligible for re-election to said office the next succeeding term; Provided, That the first election for governor under this Constitution shall be had at the time and places of voting for members of the legislature and State officers, A. D. 1888, and the term of office of the governor then elected shall begin on the first Tuesday after the first Monday in January after his election.

Section 3. No person shall be eligible to the office of governor who is not a qualified elector, and who has not been ten years a citizen of the United States, and five years a citizen and resident of the State of Florida, next preceding the time of his election; Provided, That these limitations of time shall not apply to the president of the senate or speaker of the house of representatives when, under this Constitution, the powers and duties of the governor shall devolve upon them.

Section 4. The governor shall be commander-in-chief of the military forces of the State, except when they shall be called into the service of the United States.

Section 5. The governor shall transact all executive business with the officers of the government, civil and military, and may require information in writing from the administrative officers of the executive department upon any subject relating to the duties of their respective offices.

Section 6. The governor shall take care that the laws be faithfully executed.

Section 7. When any office, from any cause, becomes vacant, and no mode is provided by this Constitution or by the laws of the State for filling such vacancy, the governor shall have the power to fill such vacancy by granting a commission for the unexpired term.

Section 8. The governor may, on extraordinary occasions, convene the legislature by proclamation, and shall in his proclamation state the purpose for which it is to be convened, and the legislature when organized shall transact no legislative business other than that for which it is especially convened, or such other legislative business as the governor may call to its attention while in session, except by a two-thirds vote of each house.

Section 9. The governor shall communicate by message to the legislature at each regular session information concerning the condition of the State, and recommend such measures as he may deem expedient.

Section 10. In case of a disagreement between the two houses with respect to the time of adjournment, the governor shall have power

to adjourn the legislature to such time as he may think proper, provided it be not beyond the time fixed for the meeting of the next legislature.

Section 11. The governor shall have power to suspend the collection of fines and forfeitures, and grant reprieves for a period not exceeding sixty days, for all offences, except in cases of impeachment. In cases of conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the legislature at its next session, when the legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve; and if the legislature shall fail or refuse to make disposition of such case, the sentence shall be enforced at such time and place as the governor may direct. He shall communicate to the legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon or commutation granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, and the date of its remission, commutation, pardon or reprieve.

Section 12. The governor, justices of the supreme court and attorney-general, or a major part of them, of whom the governor shall be one, may, upon such conditions, and with such limitations and restrictions as they may deem proper, remit fines and forfeitures, commute punishment and grant pardons after conviction, in all cases except treason and impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons. (Amended at general election in 1896, see page 39, post.)

Section 13. The governor may, at any time, require the opinion of the justices of the supreme court as to the interpretation of any portion of this Constitution upon any question affecting his executive powers and duties, and the justices shall render such opinion in writing.

Section 14. All grants and commissions shall be in the name and under the authority of the State of Florida, sealed with the great seal of the State, signed by the governor, and countersigned by the secretary of state.

Section 15. All officers that shall have been appointed or elected, and that are not liable to impeachment, may be suspended from office by the governor for malfeasance, or misfeasance, or neglect of duty in office, for the commission of any felony, or for drunkenness or incompetency, and the cause of suspension shall be communicated to the officer suspended and to the senate at its next session. And the governor, by and with the consent of the senate, may remove any officer, not liable to impeachment, for any cause above named. Every suspension shall continue until the adjournment of the next session of the senate, unless the officer suspended shall, upon the recommendation of the governor, be removed; but the governor may reinstate the officer so suspended upon satisfactory evidence that the charge or charges against him are untrue. If the senate shall refuse to remove, or fail to take action before its adjournment, the officer suspended shall resume the duties of the office. The governor shall have power to fill by appointment any office, the incumbent of which has been suspended. No officer suspended who shall under this

section resume the duties of his office, shall suffer any loss of salary or other compensation in consequence of such suspension. The suspension or removal herein authorized shall not relieve the officer from indictment for any misdemeanor in office.

Section 16. The governor shall appoint all commissioned officers of the State militia, including an adjutant-general for the State. The adjutant-general shall be the chief officer of the governor's staff, with the rank of major-general. His duties and compensation shall be prescribed by law; Provided, That this Constitution shall work no vacancy in the office of adjutant-general, as now constituted, until the expiration of the present term.

Section 17. The governor and the administrative officers of the executive department shall constitute a board of commissioners of State institutions, which board shall have supervision of all matters connected with such institutions in such manner as shall be prescribed by law.

Section 18. The governor shall have power to disapprove of any item or items of any bills making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Section 19. In case of the impeachment of the governor, his removal from office, death, resignation or inability to discharge his official duties, the powers and duties of governor shall devolve upon the president of the senate for the residue of the term, or until the disability shall cease; and in case of the impeachment, removal from office, death, resignation or inability of the president of the senate, the powers and duties of the office shall devolve upon the speaker of the house of representatives. But should there be a general election for members of the legislature during such vacancy, an election for governor to fill the same shall be had at the same time.

Section 20. The governor shall be assisted by administrative officers as follows: A secretary of state, attorney-general, comptroller, treasurer, superintendent of public instruction, and commissioner of agriculture, who shall be elected at the same time as the governor, and shall hold their offices for the same term; Provided, That the first election of such officers shall be had at the time of voting for governor A. D. 1888.

Section 21. The secretary of state shall keep the records of official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature; and shall be the custodian of the great seal of the State. He shall also have charge of the capitol building and grounds, and perform such other duties as shall be prescribed by law.

Section 22. The attorney-general shall be the legal adviser of the governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the supreme court.

Section 23. The comptroller shall examine, audit, adjust and settle the accounts of all officers of the State and perform such other duties as may be prescribed by law.

Section 24. The treasurer shall receive and keep all funds, bonds, and other securities, in such manner as may be prescribed by law, and shall disburse no funds, nor issue bonds, or other securities, except upon the order of the comptroller countersigned by the governor, in such manner as shall be prescribed by law.

Section 25. The superintendent of public instruction shall have supervision of all matters pertaining to public instruction; the supervision of State buildings devoted to educational purposes, and perform such other duties as the legislature may provide by law.

Section 26. The commissioner of agriculture shall perform such duties in relation to agriculture as may be prescribed by law; shall have supervision of all matters pertaining to the public lands under regulations prescribed by law, and shall keep the bureau of immigration. He shall also have supervision of the State prison, and shall perform such other duties as may be prescribed by law.

Section 27. Each officer of this department shall make a full report of his official acts, of the receipts and expenditures of his office, and of the requirements of the same, to the governor at the beginning of each regular session of the legislature, or whenever the governor shall require it. Such reports shall be laid before the legislature by the governor at the beginning of each regular session thereof. Either house of the legislature may at any time call upon any officer of this department for information required by it.

Section 28. The administrative officers of the executive department shall be installed on the same day as the governor.

Section 29. The salary of the governor of the State shall be thirty-five hundred dollars a year, of the comptroller two thousand dollars, of the State treasurer two thousand dollars, of the secretary of State fifteen hundred dollars, of the attorney-general fifteen hundred dollars, of the commissioner of agriculture fifteen hundred dollars, of the superintendent of public instruction fifteen hundred dollars, a year; Provided, That no administrative officer of the executive department shall receive any additional compensation beyond his salary for any service or services rendered the State in connection with the internal improvement fund or other interests belonging to the State of Florida; Provided, further, That the legislature may after eight years from the adoption of this Constitution increase or decrease any or all of said salaries. (For salaries of other officers see General Statutes.)

ARTICLE V.

JUDICIARY DEPARTMENT.

Section 1. The judicial power of the State shall be vested in a supreme court, circuit courts, criminal courts, county courts, county judges and justices of the peace.

Section 2. The supreme court shall consist of three justices, who shall be elected by the qualified electors of the State at the time and places of voting for members of the legislature, and shall hold their office for the term of six years, except those first elected, one of whom, to be designated by lot in such manner as they may determine, shall hold his office for two years, another to be designated in like manner for four years, and the third for six years, so that one shall be elected every two years after the first election. The chief justice shall be designated by lot by said justices, and shall be such during his term of office. The first election for said justices shall take place at the first election for members of the legislature after the ratification of this Constitution, and their term of office shall begin on the first Tuesday after the first Monday in January after their election. (Amended at general election in 1902, see page 42, post.)

Section 3. No person shall ever be appointed or elected as a justice of the supreme court, or judge of a circuit court, or criminal court, that is not twenty-five years of age and an attorney at law.

Section 4. The majority of the justices of the supreme court shall constitute a quorum for the transaction of all business. The concurrence of two justices shall be necessary to a decision. The number of terms of the supreme court and the times of holding the same shall be regulated by law. All terms shall be held at the capital of the State. (Amended at general election in 1902, see page 43, post.)

Section 5. The supreme court shall have appellate jurisdiction in all cases at law and in equity originating in circuit courts, and of appeals from the circuit courts in cases arising before judges of the county courts in matters pertaining to their probate jurisdiction and in the management of the estates of infants, and in cases of conviction of felony in the criminal courts, and in all criminal cases originating in the circuit courts. The court shall have the power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and also all writs necessary or proper to the complete exercise of its jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or any justice thereof, or before any circuit judge.

Section 6. The legislature shall have power to prescribe regulations for calling into the supreme court a judge of the circuit court, to hear and determine any matters pending before the court in the place of any justice thereof, that shall be disqualified or disabled in such case from interest or other cause.

Section 7. The supreme court shall appoint a clerk who shall have his office at the capital and shall be librarian of the supreme court library.

Section 8. There shall be seven circuit judges, who shall be appointed by the governor and confirmed by the Senate, and who shall hold their office for six years. The State shall be divided into seven judicial circuits, and one judge shall be assigned to each circuit. Such judge shall hold at

least two terms of his court in each county within his circuit every year, at such times and places as shall be prescribed by law, and may hold special terms. The governor may, in his discretion, order a temporary exchange of circuits by the respective judges, or order any judge to hold one or more terms or parts of terms in any other circuit than that to which he is assigned. The judge shall reside in the circuit of which he is judge. Successors to the judges of the circuit courts in office at the ratification of this Constitution shall be appointed and confirmed at the first session of the legislature after such ratification. (Amended at general election in 1902, see page 43, post.)

Section 9. The salary of the justices of the supreme court shall be three thousand dollars a year. The salary of each circuit judge shall be two thousand five hundred dollars a year. (Proposed amendment to be voted on at election in 1906, see page 47, post.)

Section 10. Until otherwise defined by the legislature the several judicial circuits of the State shall be as follows:

The first judicial circuit shall be composed of the counties of Escambia, Santa Rosa, Walton, Holmes, Washington and Jackson.

The second judicial circuit shall be composed of the counties of Gadsden, Liberty, Calhoun, Franklin, Leon, Wakulla and Jefferson.

The third judicial circuit shall be composed of the counties of Madison, Taylor, Lafayette, Hamilton, Suwannee and Columbia.

The fourth judicial circuit shall be composed of the counties of Nassau, Duval, Baker, Bradford, Clay and St. Johns.

The fifth judicial circuit shall be composed of the counties of Putnam, Alachua, Levy, Marion and Sumter.

The sixth judicial circuit shall be composed of the counties of Hernando, Hillsborough, Manatee, Polk and Monroe.

The seventh judicial circuit shall be composed of the counties of Volusia, Brevard, Orange and Dade.

Section 11. The circuit courts shall have exclusive original jurisdiction in all cases in equity, also in all cases at law, not cognizable by inferior courts, and in all cases involving the legality of any tax, assessment, or toll; of the action of ejectment and of all actions involving the titles or boundaries of real estate, and of all criminal cases not cognizable by inferior courts; and original jurisdiction of actions of forcible entry and unlawful detainer, and of such other matters as the legislature may provide. They shall have final appellate jurisdiction in all civil and criminal cases arising in the county court, or before the county judge, of all misdemeanors tried in criminal courts, of judgments or sentences of any mayor's courts, and of all cases arising before justices of the peace in counties in which there is no county court; and supervision and appellate jurisdiction of matters arising before county judges pertaining to their probate jurisdiction, or to the estates and interests of minors, and of such other matters as the legislature may provide. The circuit courts and judges shall have power to issue writs of mandamus, injunction, quo war-

ranto, certiorari, prohibition, habeas corpus and all writs proper and necessary to the complete exercise of their jurisdiction.

Section 12. The circuit courts and circuit judges may have such extra territorial jurisdiction in chancery cases as may be prescribed by law.

Section 13. It shall be the duty of the judges of the circuit courts to report to the attorney-general at least thirty days before each session of the legislature such defects in the laws as may have been brought to their attention, and to suggest such amendments or additional legislation as may be deemed necessary. The attorney-general shall report to the legislature at each session such legislation as he may deem advisable.

Section 14. A circuit judge may appoint in each county in his circuit one or more attorneys at law to be court commissioners, who shall have power in the absence from the county of the circuit judge, to allow writs of injunction, and to issue writs of habeas corpus, returnable before himself or the circuit judge. Their orders in such matters may be reviewed by the circuit judge, and confirmed, qualified or vacated. They may be removed by the circuit judge. The legislature may confer upon them further powers, not judicial, and shall fix their compensation.

Section 15. The governor, by and with the consent of the senate, shall appoint a state attorney in each judicial circuit, whose duties shall be prescribed by law, and who shall hold office for four years. There shall be elected in each county a sheriff, and a clerk of the circuit court, who shall also be clerk of the county court, except in counties where there are criminal courts, and of the board of county commissioners, and recorder and ex-officio auditor of the county, each of whom shall hold office for four years. Their duties shall be prescribed by law.

Section 16. There shall be in each county a county judge who shall be elected by the qualified electors of said county at the time and places of voting for other county officers and shall hold his office for four years. His compensation shall be provided for by law.

Section 17. The county judge shall have original jurisdiction in all cases at law in which the demand or value of property involved shall not exceed one hundred dollars; of proceedings relating to the forcible entry or unlawful detention of lands and tenements; and of such criminal cases as the legislature may prescribe. The county judge shall have jurisdiction of the settlement of the estates of decedents and minors, to order the sale of real estate of decedents and minors, to take probate of wills, to grant letters testamentary and of administration and guardianship, and to discharge the duties usually pertaining to courts of probate. He shall have the power of a committing magistrate and shall issue all licenses required by law to be issued in the county.

Section 18. The legislature may organize in such counties as it may think proper, county courts which shall have jurisdiction of all cases at law in which the demand or value of the property involved shall not exceed five hundred dollars; of proceedings relating to the forcible entry or unlawful detention of lands and tenements, and of misdemeanors, and final appellate jurisdiction in civil cases arising in the courts of justices

of the peace. The trial of such appeals may be de novo at the option of appellant. The county judge shall be the judge of said court. There shall be elected by the qualified electors of said county, at the time when the said judge is elected, a prosecuting attorney for said county, who shall hold office for four years. His duties and compensation shall be prescribed by law. Such courts may be abolished at the pleasure of the legislature.

Section 19. When any civil case at law in which the judge is disqualified shall be called for trial in a circuit or county court, the parties may agree upon an attorney at law, who shall be judge ad litem, and shall preside over the trial of and make orders in said cause as if he were judge of the court. The parties may, however, transfer the cause to another circuit court or county court, as the case may be, or may have the case submitted to a referee.

Section 20. Any civil cause may be tried before a practicing attorney as referee upon the application of the parties and an order from the court in whose jurisdiction the case may be, authorizing such trial and appointing such referee. The referee shall keep a complete record of the case, including the evidence taken, and such record shall be filed with the papers in the case in the office of the clerk; and the cause shall be subject to an appeal in the manner prescribed by law.

Section 21. The county commissioners of each county shall divide it into as many justice districts, not less than two, as they may deem necessary. There shall be elected one justice of the peace for each of the said districts. He shall hold his office for four years.

Section 22. In each county where there is no county court, as provided for in section eighteen of this article, the justices of the peace shall have jurisdiction in cases at law in which the demand or value of the property involved does not exceed one hundred dollars, and in which the cause of action accrued, or the defendant resides in his district; and in such criminal cases, except felonies, as may be prescribed by law; and in counties where county courts are established, as provided for in section eighteen of this article, every justice of the peace shall have jurisdiction in cases at law in which the demand or value of the property does not exceed fifty dollars, and in which the cause of action accrued, or the defendant resides in his district; and he shall have power to issue process for the arrest of persons charged with crime, and to make the same returnable before himself or the county judge, for examination, discharge, commitment or bail of the accused. Justices of the peace shall have power to hold inquests of the dead. Appeals from justice of the peace courts to circuit courts in criminal cases shall be tried de novo under such regulations as the legislature may prescribe. (Amended at general election in 1896, see page 39, post.)

Section 23. A constable shall be elected by the registered voters in each justice's district, who shall perform such duties, and under such regulations as may be prescribed by law.

Section 24. There shall be established in the county of Escambia, and upon application of a majority of the registered voters in such other coun-

ties as the legislature may deem expedient, a criminal court of record, and there shall be one judge for each of the said courts, who shall be appointed by the governor and confirmed by the senate, who shall hold his office for four years, and whose salary shall be one thousand dollars a year, the counties paying the salaries.

Section 25. The said courts shall have jurisdiction of all criminal cases not capital which shall arise in said counties respectively.

Section 26. There shall be six terms of said courts in each year.

Section 27. There shall be for each of said courts a prosecuting attorney, who shall be appointed by the governor and confirmed by the senate, and who shall hold his office for four years. His compensation shall be fixed by law.

Section 28. All offences triable in said court shall be prosecuted upon information under oath, to be filed by the prosecuting attorney, but the grand jury of the circuit court for the county in which said criminal court is held may indict for offences triable in the criminal court. Upon the finding of such indictment the circuit judge shall commit or bail the accused for trial in the criminal court, which trial shall be upon information.

Section 29. The county courts in counties where such criminal courts are established shall have no criminal jurisdiction and no prosecuting attorney.

Section 30. The clerk of said court shall be elected by the electors of the county in which the court is held and shall hold office for four years, and his compensation shall be fixed by law. He shall also be clerk of the county court. The sheriff of the county shall be the executive officer of said court, and his duties and fees shall be fixed by law.

Section 31. The State attorney residing in the county where such court is held shall be eligible for appointment as county solicitor for said county.

Section 32. Such court may be abolished by the legislature.

Section 33. When the office of any judge shall become vacant from any cause, the successor to fill such vacancy shall be appointed or elected only for the unexpired term of the judge whose death, resignation, retirement, or other cause created such vacancy.

Section 34. The legislature may establish in incorporated towns and cities, courts for the punishment of offences against municipal ordinances.

Section 35. No courts other than those herein specified shall be established in this State. (Amended at general election in 1898, see page 40, post.)

Section 36. All judicial officers in this State shall be conservators of the peace.

Section 37. The style of all process shall be "The State of Florida," and all prosecutions shall be conducted in the name and by the authority of the State.

Section 38. The number of jurors for the trial of causes in any court may be fixed by law but shall not be less than six in any case.

Proposed amendment by addition of Sec. 39 to be voted on at general

election in 1906, see page 47, post.) (Sections 40, 41, 42, 43, 44, 45, 46 and 47, proposed amendments to be voted on at general election 1906, see page 48, post.)

ARTICLE VI.

SUFFRAGE AND ELIGIBILITY.

Section 1. Every male person of the age of twenty-one years and upwards, that shall, at the time of registration, be a citizen of the United States, or that shall have declared his intention to become such in conformity to the laws of the United States, and that shall have resided and had his habitation, domicile, home and place of permanent abode in Florida for one year, and in the county for six months, shall in such county be deemed a qualified elector at all elections under this Constitution. (Amended at general election in 1894, see page 38, post.)

Section 2. The legislature, at its first session after the ratification of this Constitution, shall provide by law for the registration of all the legally qualified voters in each county, and for the returns of elections; and shall also provide that after the completion, from time to time, of such registration, no person not duly registered according to law shall be allowed to vote.

Section 3. Every elector shall at the time of his registration take and subscribe to the following oath: "I do solemnly swear [or affirm] that I will protect and defend the Constitution of the United States and of the State of Florida, that I am twenty-one years of age, and have been a resident of the State of Florida for twelve months and of this county for six months, and I am qualified to vote under the Constitution and laws of the State of Florida."

Section 4. No person under guardianship, non compos mentis or insane shall be qualified to vote at any election, nor shall any person convicted of felony by a court of record be qualified to vote at any election unless restored to civil rights.

Section 5. The legislature shall have power to, and shall, enact the necessary laws to exclude from every office of honor, power, trust or profit, civil or military, within the State, and from the right of suffrage, all persons convicted of bribery, perjury, larceny, or of infamous crime, or who shall make, or become directly or indirectly interested in, any bet or wager, the result of which shall depend upon any election; or that shall hereafter fight a duel or send or accept a challenge to fight, or that shall be a second to either party, or that shall be the bearer of such challenge or acceptance; but the legal disability shall not accrue until after trial and conviction by due form of law.

Section 6. In all elections by the legislature the vote shall be viva voce, and in all elections by the people the vote shall be by ballot.

Section 7. At any election at which a citizen or subject of any foreign country shall offer to vote under the provisions of this Constitution, if required by any elector, he shall produce to the persons lawfully authorized to conduct and supervise such election a duly sealed and certified copy of his declaration of intention, and if unable to do so by reason that such

copy cannot be obtained at the time of said election, he shall be allowed to make affidavit before a proper officer, setting forth the reason why he is unable to furnish such certificate, and if said affidavit prove satisfactory to the inspectors they shall allow said elector to cast his vote; and any naturalized citizen offering to vote shall, if so required by any elector, produce his certificate of naturalization or a duly certified copy thereof, and in the event that said elector cannot produce the same, he shall be allowed to make affidavit before a proper officer stating in full the reason why it cannot be furnished, and if satisfactory to the inspectors of said election such elector shall be allowed to vote. (Repealed at general election in 1894, see page 38, post.)

Section 8. The legislature shall have power to make the payment of the capitation tax a prerequisite for voting, and all such taxes received shall go into the school fund.

Section 9. The legislature shall enact such laws as will preserve the purity of the ballot given under this Constitution.

ARTICLE VII.

CENSUS AND APPORTIONMENT.

Section 1. The senators representing the odd numbered districts, as said districts are now designated, whose terms have not expired, and those senators representing even numbered districts, to be elected A. D. 1886, under the Constitution of 1868, shall be the first senate under this Constitution; and the members of the assembly to be elected A. D. 1886 shall be the first house of representatives under this Constitution, and the senate and house of representatives thus constituted shall be the first legislature under this Constitution, and the terms of office of each of the said senators and members of the house of representatives shall expire at the election for senators and members of the house of representatives A. D. 1888, and in that year a new senate and house of representatives shall be elected.

Section 2. The legislatures that convene in the year 1889 and thereafter, shall consist of not more than thirty-two members of the senate, and of not more than sixty-eight members of the house of representatives. The members of the house of representatives shall be elected for terms of two years, and the members of the senate shall be elected for terms of four years, except as hereafter provided, the elections for members of the senate and house of representatives to be held at the same time and places. The terms of senators elected in 1888 from districts designated by even numbers, shall expire at the end of two years from that date, and thereafter all senators shall be elected for four years, so that one-half of the whole number shall be elected biennially. (Amended at general election in 1890, see page 37, post; and further amended at general election in 1896, see page 40, post.)

Section 3. The legislature that shall meet A. D. 1887, and those that shall meet every ten years thereafter, shall apportion the representation in the senate, the whole number of senators not to exceed thirty-two

members; and at the same time shall also apportion the representation in the house of representatives, the whole number of representatives not to exceed sixty-eight members. The representation in the house of representatives shall be apportioned among the several counties as nearly as possible according to population; Provided, Each county shall have one representative at large in the house of representatives, and no county shall have more than three representatives.

Section 4. When any senatorial district is composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district. Any new county that may be created shall be entitled to one member in the house of representatives until the next apportionment thereafter; and shall be assigned, when created, to one of the adjoining senatorial districts as shall be determined by the legislature. (Amended at general election in 1900, see page 41, post.)

Section 5. The legislature shall provide for an enumeration of all the inhabitants of the State by counties for the year 1895, and every ten years thereafter.

ARTICLE VIII.

COUNTIES AND CITIES.

Section 1. The State shall be divided into political divisions to be called counties.

Section 2. The several counties as they now exist are hereby recognized as the legal political divisions of the State.

Section 3. The legislature shall have power to establish new counties, and to change county lines. Every newly established county shall be held liable for its proportion of the then existing liabilities of the county or counties from which it shall be formed, rated upon the basis of the assessed value of the property, both real and personal, subject to taxation within the territory taken from any county or counties; and every county acquiring additional territory from another county shall be held liable for its proportion of the liabilities of such other county existing at the time of such acquisition, to be rated upon the basis of the assessed value of all property subject to taxation within such acquired territory.

Section 4. The legislature shall have no power to remove the county seat of any county, but shall provide by general law for such removal; Provided, That in the formation of new counties the county seat may be temporarily established by law.

Section 5. There shall be appointed by the governor, by and with the consent of the senate, in and for each county, five county commissioners. Their terms of office shall be two years, and their powers, duties and compensation shall be prescribed by law. The legislature shall provide for the division of each county into five districts, and one county commissioner shall be selected from each of such districts. (Amended at general election in 1900, see page 41, post.)

Section 6. The legislature shall provide for the election by the qualified electors in each county of the following county officers: A clerk of

the circuit court, a sheriff, constables, a county assessor of taxes, a tax collector, a county treasurer, a superintendent of public instruction, and a county surveyor. The term of office of all county officers mentioned in this section shall be four years, except that of county assessor of taxes, county tax collector and county treasurer, who shall be elected for two years. Their powers, duties and compensation shall be prescribed by law.

Section 7. The legislature shall by law authorize the county commissioners of the several counties, where it is deemed necessary for assessment purposes, to divide their respective counties into taxation districts, and to appoint in and for each district an assistant assessor of taxes, whose powers, duties and compensation shall be prescribed by law. All county officers, except assistant assessors of taxes, shall, before entering upon the duties of their respective offices, be commissioned by the governor; but no such commission shall issue to any such officer until he shall have filed with the secretary of state a good and sufficient bond in such sum and upon such conditions as the legislature shall by law prescribe, approved by the county commissioners of the county in which said officer resides, and by the comptroller. No county officer shall become security upon the official bond of any other county officer. If any person elected or appointed to any county office shall fail to give bond and qualify within sixty days after his election, the said office shall become vacant.

Section 8. The legislature shall have power to establish and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time. When any municipality shall be abolished, provision shall be made for the protection of its creditors.

ARTICLE IX.

TAXATION AND FINANCE.

Section 1. The legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

Section 2. The legislature shall provide for raising revenue sufficient to defray the expenses of the State for each fiscal year, and also a sufficient sum to pay the principal and interest of the existing indebtedness of the State.

Section 3. No tax shall be levied except in pursuance of law.

Section 4. No money shall be drawn from the treasury except in pursuance of appropriations made by law.

Section 5. The legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the principles established for State taxation. But the cities and incorporated towns shall make their own assessments

for municipal purposes upon the property within their limits. The legislature may also provide for levying a special capitation tax, and a tax on licenses. But the capitation tax shall not exceed one dollar a year and shall be applied exclusively to common school purposes.

Section 6. The legislature shall have power to provide for issuing State bonds only for the purpose of repelling invasion or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued, at a lower rate of interest.

Section 7. No tax shall be levied for the benefit of any chartered company of the State, nor for paying interest on any bonds issued by such chartered companies, or by counties, or by corporations, for the above mentioned purpose.

Section 8. No person or corporation shall be relieved by any court from the payment of any tax that may be illegal, or illegally or irregularly assessed, until he or it shall have paid such portion of his or its taxes as may be legal, and legally and regularly assessed.

Section 9. There shall be exempt from taxation property to the value of two hundred dollars to every widow that has a family dependent on her for support, and to every person that has lost a limb or been disabled in war or misfortune.

Section 10. The credit of the State shall not be pledged or loaned to any individual, company, corporation or association; nor shall the State become a joint owner or stockholder in any company, association or corporation. The legislature shall not authorize any county, city, borough, township or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

ARTICLE X.

HOMESTEAD AND EXEMPTIONS.

Section 1. A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State, together with one thousand dollars' worth of personal property, and the improvements on the real estate, shall be exempt from forced sale under process of any court, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes or assessments, or for the payment of obligations contracted for the purchase of said property, or for the erection or repair of improvements on the real estate exempted, or for house, field or other labor performed on the same. The exemption herein provided for in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner; and no judgment or decree or execution shall be a lien upon exempted property except as provided in this article.

Section 2. The exemptions provided for in section one shall inure to the widow and heirs of the party entitled to such exemption, and shall

apply to all debts, except as specified in said section. (A proposed amendment to this section was defeated at election in 1892.)

Section 3. The exemptions provided for in the Constitution of this State adopted in 1868 shall apply as to all debts contracted and judgments rendered since the adoption thereof and prior to the adoption of this Constitution.

Section 4. Nothing in this article shall be construed to prevent the holder of a homestead from alienating his or her homestead so exempted by deed or mortgage duly executed by himself or herself, and by husband and wife, if such relation exists; nor if the holder be without children to prevent him or her from disposing of his or her homestead by will in a manner prescribed by law.

Section 5. No homestead provided for in section one shall be reduced in area on account of its being subsequently included within the limits of an incorporated city or town, without the consent of the owner.

Section 6. The legislature shall enact such laws as may be necessary to enforce the provisions of this article.

ARTICLE XI.

MARRIED WOMEN'S PROPERTY.

Section 1. All property, real and personal, of a wife owned by her before marriage, or lawfully acquired afterwards by gift, devise, bequest, descent, or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent given by some instrument in writing, executed according to the law respecting conveyances by married women.

Section 2. A married woman's separate real or personal property may be charged in equity and sold, or the uses, rents and profits thereof sequestrated for the purchase money thereof; or for money or thing due upon any agreement made by her in writing for the benefit of her separate property; or for the price of any property purchased by her, or for labor and material used with her knowledge or assent in the construction of buildings, or repairs, or improvements upon her property, or for agricultural or other labor bestowed thereon, with her knowledge and consent.

Section 3. The legislature shall enact such laws as shall be necessary to carry into effect this article.

ARTICLE XII.

EDUCATION.

Section 1. The legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same.

Section 2. There shall be a superintendent of public instruction, whose duties shall be prescribed by law, and whose term of office shall be for four years and until the election and qualification of his successor.

Section 3. The governor, secretary of state, attorney-general, state treasurer and state superintendent of public instruction shall constitute a body corporate, to be known as the State board of education of Florida, of which the governor shall be president, and the superintendent of public instruction secretary. This board shall have power to remove any subordinate school officer for cause, upon notice to the incumbent; and shall have the management and investment of all state school funds under such regulations as may be prescribed by law, and such supervision of schools of higher grades as the law shall provide.

Section 4. The state school fund, the interest of which shall be exclusively applied to the support and maintenance of public free schools, shall be derived from the following sources:

The proceeds of all lands that have been or may hereafter be granted to the State by the United States for public school purposes.

Donations to the State when the purpose is not specified.

Appropriations by the State.

The proceeds of escheated property or forfeitures.

Twenty-five per cent. of the sales of public lands which are now or may hereafter be owned by the State.

Section 5. The principal of the State school fund shall remain sacred and inviolate.

Section 6. A special tax of one mill on the dollar of all taxable property in the State, in addition to the other means provided, shall be levied and apportioned annually for the support and maintenance of public free schools.

Section 7. Provision shall be made by law for the distribution of the interest on the State school fund and the special tax among the several counties of the State in proportion to the number of children residing therein between the ages of six and twenty-one years. (Amended at general election in 1894, see page, 38, post.)

Section 8. Each county shall be required to assess and collect annually for the support of public free schools therein, a tax of not less than three mills nor more than five mills on the dollar of all taxable property in the same. (Amended at general election in 1904, see page 44, post.)

Section 9. The county school fund shall consist, in addition to the tax provided for in section eight of this article, of the proportion of the interest of the State school fund and of the one mill State tax apportioned to the county; the net proceeds of all fines collected under the penal laws of the State within the county; all capitation taxes collected within the county; and shall be disbursed by the county board of public instruction solely for the maintenance and support of public free schools.

Section 10. The legislature may provide for the division of any county or counties into convenient school districts; and for the election biennially of three school trustees, who shall hold their office for two years, and who shall have the supervision of all the schools within the district; and for the levying and collection of a district school tax, for the exclusive use of public free schools within the district, whenever a majority of the qualified electors thereof that pay a tax on real, or personal property

shall vote in favor of such levy; Provided, That any tax authorized by this section shall not exceed three mills on the dollar in any one year on the taxable property of the district.

Section 11. Any incorporated town or city may constitute a school district. The fund raised by section ten may be expended in the district where levied for building or repairing school houses, for the purchase of school libraries and text-books, for salaries of teachers, or for other educational purposes, so that the distribution among all the schools of the district be equitable.

Section 12. White and colored children shall not be taught in the same school, but impartial provision shall be made for both.

Section 13. No law shall be enacted authorizing the diversion or the lending of any county or district school funds, or the appropriation of any part of the permanent or available school fund to any other than school purposes; nor shall the same, or any part thereof, be appropriated to or used for the support of any sectarian school.

Section 14. The legislature at its first session shall provide for the establishment, maintenance and management of such normal schools, not to exceed two, as the interests of public education may demand.

Section 15. The compensation of all county school officers shall be paid from the school fund of their respective counties, and all other county officers receiving stated salaries shall be paid from the general funds of their respective counties.

ARTICLE XIII.

PUBLIC INSTITUTIONS.

Section 1. Institutions for the benefit of the insane, blind and deaf, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.

Section 2. A State prison shall be established and maintained in such manner as may be prescribed by law. Provision may be made by law for the establishment and maintenance of a house of refuge for juvenile offenders; and the legislature shall have power to establish a home and work-house for common vagrants.

Section 3. The respective counties of the State shall provide in the manner prescribed by law for those of the inhabitants that, by reason of age, infirmity or misfortune, may have claims upon the aid and sympathy of society.

Section 4. The first legislature that convenes after the adoption of this Constitution shall enact the necessary laws to carry into effect the provisions of this article.

ARTICLE XIV.

MILITIA.

Section 1. All able-bodied male inhabitants of the State, between the ages of eighteen and forty-five years, that are citizens of the United

States, or have declared their intention to become citizens thereof, shall constitute the militia of the State; but no male citizen of whatever religious creed or opinion, shall be exempt from military duty except upon such conditions as may be prescribed by law.

Section 2. The legislature may provide by law for organizing and disciplining the militia of the State, for the encouragement of volunteer corps, the safe keeping of the public arms, and for a guard for the State prison.

Section 3. The governor, by and with the consent of the senate, shall appoint two major-generals, and four brigadier-generals of militia. They shall take rank according to the dates of their commissions. The officers and soldiers of the State militia, when uniformed, shall wear the uniform prescribed for the United States army; Provided, That volunteer companies may select their own uniforms.

Section 4. The governor shall have power to call out the militia to preserve the public peace, to execute the laws of the State, to suppress insurrection, or to repel invasion.

ARTICLE XV.

PUBLIC HEALTH.

Section 1. The legislature shall establish a State board of health and also county boards of health in all counties where it may be necessary.

Section 2. The State board of health shall have supervision of all matters relating to public health, with such duties, powers and responsibilities as may be prescribed by law.

Section 3. The county boards of health shall have such powers and be under the supervision of the State board to such extent as the legislature may prescribe.

ARTICLE XVI.

MISCELLANEOUS PROVISIONS.

Section 1. The seat of government shall be at the city of Tallahassee, in the county of Leon.

Section 2. Each and every officer of this State, including the members of the legislature, shall before entering upon the discharge of his official duties take the following oath of office: "I do solemnly swear [or affirm] that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of————————on which I am now about to enter. So help me God."

Section 3. The salary of each officer shall be payable quarterly upon his own requisition.

Section 4. All county officers shall hold their respective offices, and keep their official books and records, at the county seats of their counties; and the clerk and sheriff shall either reside, or have a sworn deputy, within two miles of the county seat.

Section 5. The legislature may provide for the donation of the public lands to actual settlers, but such donation shall not exceed eighty acres to any one person.

Section 6. The legislature shall provide for the speedy publication and distribution of all laws it may enact. All decisions of the supreme court and all laws and judicial decisions shall be free for publication by any person. But no judgment of the supreme court shall take effect until the opinion of the court in such case shall be filed with the clerk of said court. (Amended at general election in 1896, see page 38, post.)

Section 7. The legislature shall not create any office, the term of which shall be longer than four years.

Section 8. A plurality of votes given at an election of officers shall constitute a choice when not otherwise provided by this Constitution.

Section 9. In all criminal cases prosecuted in the name of the State, where the defendant is insolvent or discharged, the State shall pay the legal costs and expenses, including the fees of officers, under such regulations as shall be prescribed by law. (Amended at general election in 1894, see page 37, post.)

Section 10. The governor, supreme court and all the administrative officers of the executive department shall keep their offices at the seat of government. But in case of invasion or violent epidemics the governor may direct that the offices of the government be removed temporarily to some other place. The sessions of the legislature may be adjourned for the same cause to some other place, but in case of such removal all the departments of the government shall be removed to one place. But such removal shall not continue longer than the necessity for the same shall continue.

Section 11. No extra compensation shall be made to any officer, agent, employe, or contractor after the service shall have been rendered, or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which shall not have been provided for by pre-existing laws, unless such compensation or claim be allowed by bill passed by two-thirds of the members elected to each house of the legislature.

Section 12. The present seal of the State shall be and remain the seal of the State of Florida; and the present State emblem shall be and remain the emblem of the State of Florida.* (Amended at general election in 1900, see page 42, post.)

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*The joint resolution approved August 6, 1868 (Laws, p. 183), resolved: "That a seal of the size of the American silver dollar, having in the center thereof a view of the sun's rays over a highland in the distance, a cocoa tree, a steamboat on water, and an Indian female scattering flowers in the foreground, encircled by the words 'Great Seal of the State of Florida: In God We Trust,' be and the same is hereby adopted as the great seal of the State of Florida, and immediately after such seal shall be prepared for use, the governor shall issue his proclamation announcing that the same has become the great seal of the State."

The Constitution of 1868, Article XVI, section 31, directed as follows: "The legislature shall, as soon as convenient, adopt a State emblem having the design of the great seal of the State impressed upon a white ground of six feet six inches fly and six feet deep."

Section 13. The sureties upon the official bonds of all the State officers shall be residents of, and have sufficient visible property unencumbered within the State, not exempt from sale under legal process, to make good their bonds; and the sureties upon the official bonds of all county officers shall reside within the counties where such county officers reside, and have sufficient visible property therein unencumbered and not exempt from sale under legal process to make good their bonds. (Amended at general election in 1898, see page 40, post.)

Section 14. All State, county and municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified.

Section 15. No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time; Provided, Notaries public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office.

Section 16. The property of all corporations, except the property of a corporation which shall construct a ship or barge canal across the peninsula of Florida, if the legislature should so enact, whether heretofore or hereafter incorporated, shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.

Section 17. No person shall hold any office of trust or profit under the laws of this State without devoting his personal attention to the duties of the same.

Section 18. The legislature shall provide for deductions from the salaries of public officers who neglect the performance of any duty assigned them by law.

Section 19. No convention nor legislature of this State shall act upon any amendment of the Constitution of the United States proposed by congress to the several states, unless such convention or legislature shall have been elected after such amendment is submitted.

Section 20. The governor and every State officer are hereby prohibited from giving certificates of election or other credentials to any person as having been elected to the house of representatives of the United States congress, or the United States senate, who has not been five years a citizen of the State and ten years a citizen of the United States, and a qualified voter.

Section 21. Deeds and mortgages which have been proved for record and recorded according to law, shall be taken as prima facie evidence in the courts in this State without requiring proof of the execution. A certified copy of the record of any deed or mortgage that has been or shall be duly recorded according to law shall be admitted as prima facie evi-

dence thereof, and of its due execution with like effect as the original duly proved; Provided, It be made to appear that the original is not within the custody or control of the party offering such copy.

Section 22. The legislature shall provide for giving to mechanics and laborers an adequate lien on the subject matter of their labor.

Section 23. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Section 24. All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited.

Section 25. The term felony, whenever it may occur in this Constitution or in the laws of the State, shall be construed to mean any criminal offence punishable with death or imprisonment in the State penitentiary.

Section 26. The legislature may make provision for the proper adjustment and settlement of the claim of the citizens of Ocala against the State for certain aid given by the town of Ocala for the establishment of the East Florida Seminary in 1852, and conditional upon its location at the said town.

Section 27. The legislature shall appropriate at least five hundred dollars each year for the purchase of such books for the supreme court library as the court may direct.

Section 28. The legislature may provide for the drainage of the land of one person over or through that of another, upon just compensation therefor to the owner of the land over which such drainage is had.

Section 29. No private property nor right of way shall be appropriated to the use of any corporation or individual until full compensation therefor shall be first made to the owner, or first secured to him by deposit of money; which compensation, irrespective of any benefit from any improvement proposed by such corporation or individual, shall be ascertained by a jury of twelve men in a court of competent jurisdiction, as shall be prescribed by law.

Section 30. The legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures.

Section 31. No railroad or other transportation company or common carrier in this State shall grant a free pass, or discount the fare paid by the public generally, to any member of the legislature, or to any salaried officer of this State, and the legislature shall prohibit the granting or receiving such free pass, or fare at a discount, by suitable penalties.

(Proposed amendment to article by addition of sections 32, 33, 34 and 35, to be voted on at general electoin in 1906, see page 49, post.)

ARTICLE XVII.

AMENDMENTS.

Section 1. Either branch of the legislature, at a regular session thereof, may propose amendments to this Constitution; and if the same be agreed to by three-fifths of all the members elected to each house, such proposed amendments shall be entered upon their respective journals with the yeas and nays, and published in one newspaper in each county where a newspaper is published, for three months immediately preceding the next general election of representatives, at which election the same shall be submitted to the electors of the State, for approval or rejection. If a majority of the electors voting upon the amendments at such election shall adopt the amendments the same shall become a part of the Constitution. The proposed amendments shall be so submitted as to enable the electors to vote on each amendment separately. (Proposed amendment to be voted on at general election 1906, see page 51, post.)

Section 2. If at any time the legislature, by a vote of two-thirds of all the members of both houses, shall determine that a revision of this Constitution is necessary, such determination shall be entered upon their respective journals, with the yeas and nays thereon. Notice of said action shall be published weekly in one newspaper in every county in which a newspaper is published, for three months preceding the next general election of representatives, and in those counties where no newspaper is published, notice shall be given by posting at the several polling precincts in such counties for six weeks next preceding said election. The electors at said election may vote for or against the revision in question. If a majority of the electors so voting be in favor of revision, the legislature chosen at such election shall provide by law for a convention to revise the Constitution, said convention to be held within six months after the passage of such law. The convention shall consist of a number equal to the membership of the house of representatives, and shall be apportioned among the several counties in the same manner as members of said house.

ARTICLE XVIII.

SCHEDULE.

Section 1. The Constitution adopted A. D. 1868, with amendments thereto, is declared to be superseded by this Constitution: But all rights, actions, claims and contracts, both as respects individuals and bodies corporate, shall continue to be as valid as if this Constitution had not been adopted. And all fines, taxes, penalties and forfeitures due and owing to the State of Florida under the Constitution of 1868, shall inure to the use of the State under this Constitution.

Section 2. All laws now in force not inconsistent with this Constitution shall continue in force until they shall expire by their own limitation, or be repealed by the legislature.

Section 3. All persons holding any office or appointment at the ratification of this Constitution shall continue in the exercise of the duties

thereof, according to their respective commissions or appointments, and until their successors are duly qualified, unless by this Constitution otherwise provided.

Section 4. Nothing contained in this Constitution shall operate to vacate the office of lieutenant-governor until the expiration of his present term.

Section 5. All vacancies occurring by limitation of terms before the general election of 1888 shall be filled as provided for by law under the Constitution of 1868.

Section 6. The term of office for all appointees to fill vacancies in any of the elective offices under this Constitution, shall extend only to the election and qualification of a successor at the ensuing general election.

Section 7. In all cases of elections to fill vacancies in office such election shall be for the unexpired term.

Section 8. Upon the ratification of this Constitution the commissioner of lands and immigration shall assume the office of commissioner of agriculture, and his duties as such shall be prescribed by the first legislature assembled under this Constitution.

Section 9. A general election shall be held in each county in this State on the first Tuesday after the first Monday in November, A. D. 1888, and every two years thereafter, for all elective State and county officers whose terms of office are about to expire, or for any office that shall have become vacant. (Amended at general election in 1890, see page 37 post; and further amended at general election in 1896, see page 40, post.)

Section 10. The first election for county judge, clerk of the circuit court, sheriff, tax assessor, tax collector, county treasurer, county superintendent of public instruction, county surveyor, justices of the peace, constables and all other elective county officers shall be at the general election in 1888.

Section 11. It shall be the duty of the president of this convention immediately on its adjournment to certify to the governor a copy of this Constitution.

Section 12. Upon receipt of such certified copy the governor shall forthwith announce the fact by proclamation, to be published in such newspapers in this State as may be deemed requisite for general information, and five printed copies of such Constitution shall be transmitted by the secretary of state to the clerk of the circuit court, and five to the county judge of each county, which shall be kept on file in their respective offices for examination by any person desiring the same.

Section 13. All courts as now organized and constituted shall continue with their jurisdiction until the legislature shall conform to the requirements of this Constitution the jurisdiction of such courts as, under this Constitution, are to exercise in whole or in part the jurisdiction of courts now organized.

Section 14. The terms of office of all county officers, unless otherwise provided, shall commence on the first Tuesday after the first Monday in January next after their election.

ARTICLE XIX.

LOCAL OPTION.

Section 1. The board of county commissioners of each county in the State, not oftener than once in every two years, upon the application of one-fourth of the registered voters of any county, shall call and provide for an election in the county in which application is made, to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein, the question to be determined by a majority vote of those voting at the election called under this section, which election shall be conducted in the manner prescribed by law for holding general elections; Provided, That intoxicating liquors, either spirituous, vinous, or malt, shall not be sold in any election district in which a majority vote was cast against the same at the said election. Elections under this section shall be held within sixty days from the time of presenting said application, but if any such election should thereby take place within sixty days of any State or National election, it shall be held within sixty days after any such State or National election.

Section 2. The legislature shall provide necessary laws to carry out and enforce the provisions of section one of this article.

ORDINANCES.

ORDINANCE NO. 1.

Section 1. This Constitution shall be submitted to the people of the State of Florida for ratification on the first Tuesday after the first Monday in November, A. D. 1886, and it shall require a majority of the votes cast upon the question to determine its ratification or rejection.

Section 2. At such an election each qualified elector shall express his assent or dissent, by having written or printed upon the ticket which he shall vote the words, "For the Constitution," or "Against the Constitution;" such election being subject to the same regulations and restrictions as are now prescribed by law. And in case of its ratification by the people, the governor shall forthwith cause proclamation to be made of the fact, and it shall go into effect on the first day of January, A. D. 1887.

ORDINANCE NO. 2.

Section 1. Article XIX shall be submitted to the people, when the Constitution is submitted for ratification, to become a part of the Constitution, if adopted by a majority of the votes cast upon the question, and the ballots of those voting on this article shall have written or printed on them the words, "For Article XIX," or "Against Article XIX."

ORDINANCE NO. 3.

Be it Ordained by the People of Florida, Represented in Constitutional Convention:

Section 1. The pay of the members of this Constitutional Convention shall be a per diem for attendance of six ($6.00) dollars a day in addition to mileage of ten cents a mile, each way, from their places of residence to the capital and return, estimated by the shortest thoroughfare.

Section 2. The pay of the secretary and assistant secretary of the convention and all the clerks elected by the convention shall be six ($6.00) dollars per diem each, allowing the secretary and assistant secretary one day after adjournment to complete unfinished business; all committee clerks shall receive five ($5.00) dollars per diem for the number of days certified by the chairman of the committee; the pay of the sergeant-at-arms shall be six ($6.00) dollars per diem, and the assistant sergeant-at-arms shall be five ($5.00) dollars per diem; the pay of the messengers of the convention shall be four ($4.00) dollars per diem each; the pay of the door-keeper shall be five ($5.00) dollars per diem; the pay of pages shall be ($3.00) dollars per diem each; the pay of the janitor shall be two ($2.00) dollars per diem; the pay of the chaplain shall be one hun-

dred dollars. The recording clerk shall complete his work after the adjournment of the convention, under the supervision of the secretary of state, and shall be paid for the same fifty dollars when his work is completed. Eighteen dollars shall be paid W. R. Carter for services as assistant secretary for three days. Messrs. Dorr and Bowen shall be paid for printing the amount approved by the committee on printing, certified by the president and secretary of the convention.

Section 3. The comptroller is required to draw his warrant on the treasurer in favor of the officers and employees of this convention for the full amount allowed them by section two, and to each delegate of this convention for his pro rata share of the amount appropriated by the legislature, after deducting from said amount the amount due said employees and all other expenses, including mileage of members, incurred by this convention.

Section 4. The president is authorized on behalf of this convention to issue certificates signed by himself and countersigned by the secretary, to each of the members, payable to himself or his order, bearing interest at the rate of eight per cent. per annum from date, for the amount remaining due on account of the deficiency of the legislative appropriation for expenses of this convention.

Section 5. The legislature shall make an appropriation at its next session to pay said certificates.

Section 6. Be it further ordained, That the secretary of this convention be and he is hereby authorized to audit the accounts of the members and all other expenses.

Done in open convention, at Tallahassee, this third day of August, A. D. eighteen hundred and eighty-five, and of the independence of the United States the one hundred and tenth year.

S. PASCO, President.

J. E. YONGE, First Vice-President.
WM. H. REYNOLDS, Secretary Convention.

W. M. BENNETT,	A. D. McKINNON,
JAMES R. CHALLEN,	J. P. B. GOODBREAD,
NORMAN T. SCOTT,	B. D. WADSWORTH,
WM. A. BLOUNT,	JOSEPH H. HUMPHRIES,
A. E. MAXWELL,	THEODORE RANDELL,
E. M. RANDALL,	B. F. OLIVEROS,
A. L. McCASKILL,	F. B. GENOVAR,
W. H MILTON,	T. F. SWEARINGEN,
W. L. HUNTER,	S. B. CONOVER,
OBADIAH EDGE,	M. M. BLACKBURN,
J. G. SPEER,	WM. N. SHEATS,
R. F. TAYLOR,	JAS. P. COKER,
JOHN WESTCOTT,	C. C. WILSON,
L. W. BETHEL,	JOHN NEEL,
KING WYLLY,	W. H. HAUSMAN,
WILIAM B. RANDOLPH,	PHILLIP WALTER,
JEREMIAH FOGARTY,	JAS. B. STONE,
E. C. LOVE,	ALEXANDER BELL,
JOHN CREWS PELOT,	SYD. L. CARTER,

JOHN C. RICHARD,
JOSEPH M. TOLBERT,
LEWIS WILSON,
WASH M. IVES,
JAMES F. McCLELLAN,
J. E. YONGE,
GEORGE I. DAVIS,
W. T. ORMAN,
WM. F. THOMPSON,
HUGH E. MILLER,
WM. R. BUSH,
ROBT. F. ROGERS,
HENRY C. HICKS,
JAS. WOOD DAVIDSON,
WILLIAM T. WEEKS,
E. J. LUTTERLOH,
J. R. HERNDON,
WALLACE B. CARR,
J. M. LANDRUM,
B. J. EARLE,
IRVING GILLIS,
GEO. P. FOWLER,
JEFF ALEXIS HENDLEY,
W. H. COOK,
JOHN W. TOMPKINS,
THOS. E. CLARKE,
HANNIBAL ROWE,
ROBERT ROBINSON,
JOHN B. JOHNSTON,
JOHN W. MALONE,
S. J. TURNBULL,
WALLACE S. JONES,
R. C. PARKHILL,
THOS. V. GIBBS,
E. C. F. SANCHEZ,
E. L. ODOM,
H. C. BAKER,
J. P. MORGAN,
W. F. GREEN,
ANGUS PATERSON,
JOHN D. BROOME,
HENRY W. CHANDLER,
J. D. GOSS,
THOS. N. BELL,
CHAS. W. LEWIS,
H. L. PARKER,
PAUL HATCH,
W. B. TEDDER,
ROBERT HENDERSON,
L. D. CARSON,
A. L. WELLMAN,
JNO. PARSONS,
A. S. MANN,
ALEX ZIPPERER,
H. H. DUNCAN,
T. L. CLARKE,
JOHN F. MARSHALL,
W. A. HOCKER.

AMENDMENTS

TO THE

Constitution of the State of Florida.

Adopted at the general election held in the year 1890.

Section 3 of Article III of the Constitution is hereby amended so as to read as follows:

Section 3. The members of the House of Representatives shall be chosen biennially, beginning with the general election on the first Tuesday after the first Monday in October, A. D. 1892, and thereafter on the corresponding day of every second year. (Amended at the general election in the year 1896. See post, p. 39.)

Section 2 of Article VII of the Constitution is hereby amended so as to read as follows:

Section 2. The Legislature shall consist of not more than thirty-two members of the Senate, and of not more than sixty-eight members of the House of Representatives. The members of the House of Representatives shall be elected for terms of two years, and the members of the Senate shall be elected for terms of four years (except as hereafter provided), the elections for members of the Senate and House of Representatives to be at the same time and places. The terms of Senators elected in 1890 shall expire on the first Tuesday after the first Monday in October, 1894, and the terms of those elected in 1892 shall expire on the same day in 1896, and thereafter all Senators shall be elected for four years. (Amended at the general election in the year 1896. See post, p. 40.)

Section 9 of Article XVIII of the Constitution is hereby amended so as to read as follows:

Section 9. A general election shall be held in each county in this State on the first Tuesday after the first Monday in October, A. D. 1892, and every two years thereafter, for all elective State and county officers whose terms of office are about to expire, or for any office that shall have become vacant. (Amended at the general election in the year 1896. See post, p. 40.)

AMENDMENTS TO THE CONSTITUTION OF THE STATE OF FLORIDA.

Adopted at the general election held in 1894.

(Joint Resolution No. 1, Acts of 1893.)

Section 9 of Article XVI is hereby amended so as to read as follows:

Section 9. In all criminal cases prosecuted in the name of the State, when the defendant is insolvent or discharged, the legal costs and ex-

penses, including the fees of officers, shall be paid by the counties where the crime is committed, under such regulations as shall be prescribed by law; and all fines and forfeitures collected under the penal laws of the State shall be paid into the county treasuries of the respective counties as a general county fund to be applied to such legal costs and expenses.

(Joint Resolution No. 2, Acts of 1893.)

Section 1 of Article VI of the Constitution is hereby amended so as to read as follows:

Section 1. Every male person of the age of twenty-one years and upwards that shall, at the time of registration, be a citizen of the United States, and that shall have resided and had his habitation, domicile, home and place of permanent abode in Florida for one year and in the county for six months, shall in such county be deemed a qualified elector at all elections under this Constitution. Naturalized citizens of the United States at the time of and before registration shall produce to the registration officers his certificate of naturalization or a duly certified copy thereof.

Section 7 of Article VI of the Constitution is hereby repealed.

(Joint Resolution No. 3, Acts of 1893.)

Section 7 of Article XII of the Constitution is hereby amended so as to read as follows:

Section 7. Provision shall be made by law for the apportionment and distribution of the interest on the State School Fund, and all other means provided, including the special tax, for the support and maintenance of public free schools among the several counties of the State in proportion to the average attendance upon schools in the said counties respectively.

AMENDMENTS TO THE CONSTITUTION OF THE STATE OF FLORIDA.

Adopted at the general election held in 1896.

(Joint Resolution No. 1, Acts of 1895.)

Section 6 of Article XVI of the Constitution is hereby amended so as to read as follows:

Section 6. The Legislature shall provide for the speedy publication and distribution of all laws it may enact. Decisions of the Supreme Court and all laws and judicial decisions shall be free for publication by any person. But no judgment of the Supreme Court shall take effect until the decision of the Court in such case shall be filed with the clerk of said Court.

(Joint Resolution No. 2, Acts of 1895.)

Section 17 of Article III of the Constitution is hereby amended so as to read as follows:

Section 17. Every bill shall be read by its title, on its first reading in either House, unless one-third of the members present desire it read by

sections. Every bill shall be read on three several days, unless two-thirds of the members present when such bill may be pending shall deem it expedient to dispense with this rule. Every bill shall be read by its sections on its second reading and on its final passage, unless on its second reading two-thirds of the members present in the House where such bill may be pending shall deem it expedient to dispense with this rule. The vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journal of each House; Provided, That any general revision of the entire laws embodied in any bill shall not be required to be read by sections upon its final passage, and its reading may be wholly dispensed with by a two-thirds vote. A majority of the members present in each House shall be necessary to pass every bill or joint resolution. All bills or joint resolutions so passed shall be signed by the presiding officer of the respective Houses and by the Secretary of the Senate and the Clerk of the House of Representatives.

(Joint Resolution No. 3, Acts of 1895.)

Section 12 of Article IV of the Constitution is hereby amended so as to read as follows:

Section 12. The Governor, Secretary of State, Comptroller, Attorney-General and Commissioner of Agriculture, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may deem proper, remit fines and forfeitures, commute punishment, and grant pardon after conviction, in all cases except treason and impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons.

(Joint Resolution No. 4, Acts of 1895.)

Section 22 of Article V of the Constitution is hereby amended so as to read as follows:

Section 22. The justices of the peace shall have jurisdiction in cases at law in which the demand or value of the property involved does not exceed $100.00, and in which the cause of action accrued or the defendant resides in his district; and in such criminal cases, except felonies, as may be prescribed by law, and he shall have power to issue process for the arrest of all persons charged with felonies and misdemeanors not within his jurisdiction to try, and make the same returnable before himself or the county judge for examination, discharge, commitment or bail of the accused. Justices of the peace shall have power to hold inquests of the dead. Appeal from justices of the peace courts in criminal cases may be tried de novo under such regulations as the Legislature may prescribe.

(Joint Resolution No. 5, Acts of 1895.)

Section 3 of Article III of the Constitution is hereby amended so as to read as follows:

Section 3. The members of the House of Representatives of the State of Florida shall be chosen biennially, beginning with the general election

on the first Tuesday after the first Monday in November, 1898, and thereafter on the corresponding day of every second year.

Section 2 of Article VII of the Constitution is hereby amended so as to read as follows:

Section 2. The Legislature shall consist of not more than thirty-two members of the Senate and of not more than sixty-eight members of the House of Representatives. The members of the House of Representatives shall be elected for terms of two years and the members of the Senate shall be elected for terms of four years, except as hereinafter provided. The elections for members of the House of Representatives and Senate shall be at the same time and places. The terms of office of the Senators elected in October, A. D. 1896, shall expire on the first Tuesday after the first Monday in November, A. D. 1900, and the terms of those elected in November, A. D. 1898, shall expire on the first Tuesday after the first Monday in November, A. D. 1902, and thereafter all Senators shall be elected for four years.

Section 9 of Article XVIII of the Constitution is hereby amended so as to read as follows:

Section 9. A general election shall be held in each county in this State on the first Tuesday after the first Monday in November, A. D. 1898, and every two years thereafter, for all elective State and county officers whose terms of office are about to expire, or for any elective office that shall have become vacant.

AMENDMENTS TO THE CONSTITUTION OF THE STATE OF FLORIDA.

Adopted at the general election held in 1898.

(Joint Resolution No. 1, Acts of 1897.)

Section 13 of Article XVI of the Constitution is hereby amended so as to read as follows:

Section 13. The sureties upon the official bonds of all State, county, and municipal officers shall be residents of, and have sufficient visible property unencumbered within the State, not exempt from sale under legal process, to make good their bonds; and the sureties upon the official bonds of all county and municipal officers shall reside within the county where their principals upon such bonds reside, and shall have sufficient visible and unencumbered property in such county that is not exempt from sale under legal process to make good their liability on such bonds; Provided, That any duly organized and responsible guarantee or surety company, either foreign or domestic, lawfully doing business in this State, may become and be accepted as surety on all such official bonds.

(Joint Resolution No. 2, Acts of 1897.)

Section 35 of Article V of the Constitution is hereby amended so as to read as follows:

Section 35. No courts other than herein specified shall be established in this State, except that the Legislature may clothe any railroad com-

mission with judicial powers in all matters connected with the functions of their office.

(Joint Resolution No. 2, Acts of 1897.)

Add the following as Section 34, Article III.

Section 34. Immediately upon the impeachment of any officer by the House of Representatives, he shall be disqualified from performing any of the duties of his office until acquitted by the Senate, and the Governor in such case shall at once appoint an incumbent to fill such office pending the impeachment proceedings. In case of the impeachment of the Governor, the President of the Senate, or in case of the death, resignation or inability of the President of the Senate, the Speaker of the House of Representatives shall act as Governor, pending the impeachment proceedings against the Governor.

AMENDMENTS TO THE CONSTITUTION OF THE STATE OF FLORIDA.

Adopted at the general election held in 1900.

(Joint Resolution No. 1, Acts of 1899.)

Section 4, Article VII of the Constitution is hereby amended so as to read as follows:

Section 4. Where any senatorial district is composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district. Any new county that may be created shall be entitled to one member in the House of Representatives in excess of the limit prescribed in Section 2 of this Article until the apportionment following next thereafter, and shall be assigned when created to one of the adjoining senatorial districts as shall be determined by the Legislature.

(Joint Resolution No. 2, Acts of 1899.)

Section 25 of Article III of the Constitution is hereby amended so as to read as follows:

Section 25. The Legislature shall provide by general law for incorporating such educational, agricultural, mechanical, mining, transportation, mercantile and other useful companies or associations as may be deemed necessary; but it shall not pass any special law on any such subject, and any such special law shall be of no effect; Provided, however, That nothing herein shall preclude special legislation as to a university or the public schools, or as to a ship canal across the State.

(Joint Resolution No. 3, Acts of 1899.)

Section 5 of Article VIII of the Constitution is hereby amended so as to read as follows:

Section 5. Immediately upon the ratification of this Amendment the county commissioners of the several counties of this State shall divide their respective counties into five commissioners' districts, to be numbered respectively from one to five, inclusive, and each district shall be

as nearly as possible equal in proportion to population, and thereafter there shall be in each of such districts a county commissioner, who shall be elected by the qualified electors of said county, at the time and place of voting for other county officers, and shall hold his office for two years. The powers, duties and compensation of such county commissioners shall be prescribed by law: Provided, That nothing herein shall affect the terms of commissioners holding office at the time of such division: Provided, further, That all vacancies occurring by limitation of terms, or from death, resignation or otherwise, before the election of 1902, shall be filled by appointment by the Governor, as now provided by law.

(Joint Resolution No. 4, Acts of 1899.)

Section 12 of Article XVI of the Constitution is hereby amended so as to read as follows:

Section 12. The present seal of the State shall remain the seal of the State of Florida. The State flag shall be of the following proportions and description: Depth to be three-fourths length of flag. The seal of the State, of diameter one-third of the flag, in the center of a white ground; red bars, in width one-eighth the length of flag extending from each corner toward the center, to the outer rim of the seal.

AMENDMENTS TO THE CONSTITUTION OF THE STATE OF FLORIDA.

Adopted at the general election in 1902.

(Joint Resolution No. 1, Acts of 1901.)

Section 2 of Article V of the Constitution is hereby amended so as to read as follows:

Section 2. The Supreme Court shall consist of three Justices, except as hereinafter provided, who shall be elected by the qualified electors of the State at the time and places of voting for members of the Legislature, and shall hold their office for the term of six years, except those first elected, one of whom, to be designated by lot in such manner as they may determine, shall hold his office for two years; another, to be designated in like manner, for four years, and the third for six years, so that one shall be elected every two years after the first election. The Chief Justice shall be designated by lot by said Justices, and shall be such during his term of office. The first election for said Justices shall take place at the first election for members of the Legislature after the ratification of this Constitution, and their term of office shall begin on the first Tuesday after the first Monday after their election.

Upon ratification of this Amendment to the Constitution, the Governor, by and with the consent of the Senate, shall appoint three more Justices of the Supreme Court, each of whom shall have the same powers and shall receive the same compensation as each of the other Justices of the Supreme Court, and each of the Justices so appointed shall hold office until the first Tuesday after the first Monday of June in the year 1905, and may further hold office until his successor shall be elected and

qualified, if it shall be so provided by law. For the year 1905 and for the subsequent years the Legislature may provide by law for the election of such number of Justices of the Supreme Court as it may determine, and prescribe their terms of office, not to exceed six years: Provided, That the number of Justices of the Supreme Court holding office at the same time shall not be less than three, and shall not be greater than six, and provided that no Justice of the Supreme Court can by such an act of the Legislature be deprived of his office during the term for which he was elected.

Section 4 of Article V of the Constitution is hereby amended so as to read as follows:

Section 4. The majority of the Justices of the Supreme Court shall constitute a quorum for the transaction of all business. But when there shall be six Justices of the Supreme Court, the Court may hear and determine cases and exercise any of its powers when sitting either in a body or in two divisions, under such regulations as may be prescribed by law or by the rules of said Court not inconsistent therewith. The concurrence of a majority of the members of the Court sitting in any cause wherein the Court shall sit as one body shall be necessary to a decision; and when any member of a division of the Court shall dissent from the majority of such division on any question, such question shall be submitted to the Court sitting in a body. The number of terms of the Supreme Court and the time of holding the same shall be regulated by law. All terms shall be held at the Capital of the State.

(Joint Resolution No. 2, Acts of 1901.)

Section 8 of Article V of the Constitution is hereby amended so as to read as follows:

Section 8. There shall be eight* Circuit Judges, who shall be appointed by the Governor and confirmed by the Senate, and who shall hold their office for six years.

The State shall be divided by the Legislature, at its first regular session after the adoption of this section, into eight judicial circuits, and one judge shall be assigned to each circuit. Such judge shall hold at least two terms of his court in each county within his circuit every year, and at such times and places as shall be prescribed by law, and may hold special terms.

The Governor may, in his discretion, order a temporary exchange of circuits by the respective judges, or order any judge to hold one or more terms or part or parts of any term in any other circuit than that to which he is assigned. The judge shall reside in the circuit of which he is judge.

This section shall not be operative until the Legislature shall have divided this State into eight circuits, as hereinbefore provided for, and the seven circuit judges holding office at the time of such division shall continue to exercise jurisdiction over their several existing circuits as constituted at the time of such division, until the judge of the additional

*Chapter 5120, Acts of 1903, creates the counties of Alachua, Bradford, Levy, Putnam and Baker into the Eighth Judicial Circuit.

circuit shall have qualified. The circuit judges holding office at the time of such division shall severally continue in office until the expiration of their then existing term of office as judges of the circuits respectively in which, under such division, the county of his residence may be included; and a judge for the additional circuit shall be appointed for a term equal to the unexpired term of the other circuit judges upon such division being made. The salary of each circuit judge shall be two thousand, seven hundred and fifty dollars.

AMENDMENT TO THE CONSTITUTION OF THE STATE OF FLORIDA.

Adopted at the general election held in 1904.

(Joint Resolution No. 2, Acts of 1903.)

Section 8 of Article XII of the Constitution is hereby amended so as to read as follows:

Section 8. Each county shall be required to assess and collect annually for the support of public free schools therein, a tax of not less than three (3) mills, nor more than seven (7) mills on the dollar, of all taxable property in the same.

PROPOSED AMENDMENTS

TO THE

Constitution of the State of Florida.

ACTS 1905.

To be Voted Upon at the General Election in 1906.

RESOLUTIONS.

[No. 1.]

JOINT RESOLUTION Proposing to Amend Section 9 of Article V of the Constitution of the State of Florida, Relative to the Salaries of Justices of the Supreme Court and Circuit Judges.

Be it Resolved by the Legislature of the State of Florida:

That Section nine (9) of Article five (5) of the Constitution of the State of Florida be and the same is hereby amended so as to read as follows, viz:

"Section 9. The salary of each Justice of the Supreme Court shall be four thousand ($4,000.00) dollars a year. The salary of each Circuit Judge shall be three thousand five hundred ($3,500.00) dollars a year."

That the foregoing amendment to Section 9 of Article V of the Constitution is hereby agreed to and the same shall be submitted to the electors of the State for approval or rejection at the next general election of representatives as required by Section 1, Article XVII of the Constitution.

Approved May 31st, 1905.

[No. 2.]

A JOINT RESOLUTION Proposing an Amendment to Article V of the Constitution of the State of Florida Relative to the Judiciary Department.

Be it Resolved by the Legislature of the State of Florida:

That the following amendment to Article V of the Constitution of the State of Florida, relative to the Judiciary Department, to be numbered Section 39 of said Article V, be and the same is hereby agreed to and shall be submitted to the electors of the State at the general election to be held on the first Tuesday after the first Monday in November, A. D. 1906, for ratification or rejection, to-wit:

Section 39. The annual salary of the Judges of each of the Criminal Courts of Record now, or hereafter to be, established shall be paid quarterly by the county where such court is established, and shall be as follows: In counties of less than fifteen thousand population, one thousand dollars; in counties of from fifteen thousand to twenty-five thousand population, fifteen hundred dollars; in counties of from twenty-five thousand to thirty-five thousand population, two thousand dollars; and in counties of more than thirty-five thousand population, twenty-five hundred dollars, hereby repealing any and all part and parts of the said Constitution in conflict herewith.

Approved June 6, 1905.

[No. 3.]

A JOINT RESOLUTION Proposing Amendments to Article V of the Constitution of the State of Florida Relative to the Judiciary Department.

Be it Resolved by the Legislature of the State of Florida:

That the following amendments to Article V of the Constitution of the State of Florida, relative to the Judiciary Department, to be numbered Sections 40, 41, 42, 43, 44, 45, 46 and 47, of said Article V, be and the same are hereby agreed to and shall be submitted to the electors of the State at the general election to be held on the first Tuesday after the first Monday in November, A. D. 1906, for ratification or rejection, to-wit:

Section 40. There shall be established in the county of Escambia, whenever the voters of said county shall so determine by a majority of the votes cast on the question at any general election, a court of record, and there shall be a judge of said court who shall be appointed by the Governor and confirmed by the Senate who shall hold his office for six years and whose salary shall be two thousand, five hundred dollars a year, payable quarterly by the county of Escambia. The criminal court of record now established in Escambia county shall, upon the adoption of these amendments, become and be the court of record as herein provided, and all officers of such criminal court of record shall be officers of such court of record and discharge the duties and receive the emoluments of such until the expiration of their present term of office.

Section 41. The said court and judge shall have exclusive original jurisdiction of all criminal cases, not capital, which shall arise in Escambia county, and shall have in Escambia county, concurrent with the circuit court and circuit judge of said county, the same original jurisdiction of all other cases and matters as the circuit court and circuit judge of said county, and the same power to issue writs of mandamus, injunction, quo warranto, certiorari, prohibition, habeas corpus and all writs proper and necessary to the complete exercise of their jurisdiction as the circuit court and circuit judge of said county, except the power and authority to summon and empanel a grand jury.

Section 42. There shall be six terms of said court in each year.

Section 43. There shall be for said court a prosecuting attorney who shall be appointed by the Governor and confirmed by the Senate, and who shall hold his office for four years. His compensation shall be fixed by law.

Section 44. All offenses triable in said court shall be prosecuted upon information under oath to be filed by the prosecuting attorney, but the grand jury of the circuit court for said county may indict for any offense triable in the court of record. Upon the finding of such indictment the circuit judge shall commit or bail the accused for trial in the court of record, which trial shall be upon information.

Section 45. The clerk of said court shall be elected by the electors of Escambia county and shall hold office for four years, and his com-

pensation shall be fixed by law. The sheriff of Escambia county shall be the executive officer of said court, and his duties and fees shall be fixed by law.

Section 46. The same rules of procedure and practice which obtain in the circuit court of the county shall obtain in the court of record, and all laws relative to criminal courts of record, except as otherwise provided herein, shall apply to and control the court of record. Change of venue may be had from the court of record to the circuit court of another county for the same causes, and under the laws providing for changing the venue from the circuit court of one county to the circuit court of another county. The Governor may, in his discretion, order the circuit judge of Escambia county or of any other county to hold one or more terms or parts of terms of the court of record. Any civil cause in the court of record may be tried before a referee, or in case of the disqualification of the judge of the court of record, may be tried by a judge ad litem, or may be transferred to the circuit court of Escambia county or of any other county, in the same way and according to the same provisions as govern such proceedings in the circuit court of Escambia county.

Section 47. The Supreme Court of the State shall have appellate jurisdiction in all cases at law and in equity originating in the court of record, and in cases of conviction of felony in the court of record. The circuit court of Escambia county shall have final appellate jurisdiction of all misdemeanors tried in the court of record. All appeals or writs of error prosecuted from the court of record, whether to the Supreme Court or circuit court, shall be prosecuted in the same way and according to the same rules as govern such proceedings from the circuit court to the Supreme Court.

Approved June 6, 1905.

[No. 4.]

JOINT RESOLUTION Proposing An Amendment to Article XVI of the Constitution of the State of Florida, Relating to the Drainage, Reclamation and Improvement of the Swamp and Overflowed Lands, the Creation of a Board of Drainage Commissioners, Prescribing Its Powers and Duties, Authorizing the Establishment of Drainage Districts, a Drainage System, the Building of Canals, Levees, Dikes and Reservoirs for Purposes of Drainage, Irrigation and Commerce, the Assessment of Lands to be Drained, Reclaimed, Improved and Benefitted by Means Thereof, the collection of Necessary Funds by Assessment of Benefits and Taxation and Providing for the Management and Maintenance thereof, and for the Exercise of the Right of Eminent Domain, and for the Sale and Uses of Said Lands for the Purposes of Drainage, Reclamation and Improvement of Said Swamp and Overflowed Lands Within the State of Florida.

Be it Resolved by the Legislature of the State of Florida:

That the following amendment to Article XVI of the Constitution of the State of Florida be and it is hereby agreed to and shall be sub-

mitted to the electors of the State at the general election, to be held on the first Tuesday after the first Monday in November, A. D. 1906, for ratification or rejection.

Section 32. The Governor, the Comptroller, the State Treasurer, the Attorney General and the Commissioner of Agriculture of the State of Florida, and their successors in office, are hereby constituted and designated as a board of drainage commissioners, and are hereby authorized and empowered to establish a system of canals, drains, levees, dikes and reservoirs of such dimension and depths, as in the judgment of said board of drainage commissioners is deemed advisable, to drain and reclaim the swamp and overflowed lands within the State of Florida, or such parts or portions thereof as is deemed best by said board of drainage commissioners from time to time, and to provide for the irrigation of the lands reclaimed, and to maintain such canals, drains, levees, dikes, and reservoirs in such manner as will be most advantageous to the territory so drained, the State of Florida, its inhabitants and the commerce thereof.

Section 33. That the board of drainage commissioners are hereby authorized and empowered to establish drainage districts and fix the boundaries thereof in the State of Florida. That the board of drainage commissioners be and it is authorized and empowered to prepare a list or lists of all the alluvial or swamp and overflowed taxable lands within such drainage district or districts, and levy thereon an acreage tax not exceeding ten cents per acre per annum to be fixed annually by said board of drainage commissioners, and the various tax assessors of the various counties embraced in part or in whole within such drainage district or districts shall receive such list or lists and enter the same upon the tax rolls of the county or counties in which such lands may lie and the amount so levied by the board of drainage commissioners in such manner and form as may be prescribed by the board of drainage commissioners from time to time, which amounts shall be collected by the various tax collectors of the counties wherein such levees have been made as other taxes are collected in accordance with law, and pay over said amounts collected to the board of drainage commissioners, said commissioners shall have a lien superior to all other liens upon the taxable lands in any such drainage districts to be enforced by tax levy, for the cost of any work done under the provisions hereof, or done, prior to the adoption of this amendment, under the provisions of an act of the Legislature passed in 1905.

Section 34. That the board of drainage commissioners be and it is authorized to exercise the right of eminent domain in the condemnation of land for the location of its canals, drains, levees, dikes and reservoirs for the purposes aforesaid and may enter upon, take and use such land as it may, pending condemnation proceedings, deem necessary for such purposes, and in ascertaining the compensation to be paid for such land or right of way, benefits to be derived from such drainage shall be considered by the jury.

Section 35. The Legislature may provide for the assessment of benefits derived by lands by reason of such drainage, and the collection there-

of; the proceeds therefrom shall be paid to the board of drainage commissioners to be used by them for such drainage purposes.

Approved May 27, 1905.

[No. 5.]

HOUSE JOINT RESOLUTION Proposing an Amendment to Section 1, of Article XVII of the Constitution of the State of Florida.

Be it resolved by the Legislature of the State of Florida:

That the following amendment to the Constitution of the State of Florida be, and the same is hereby agreed to and shall be submitted to the electors of the State at the general election in 1906 for ratification or rejection:

Section 1. Either branch of the Legislature, at a regular session thereof, may propose amendments to this Constitution; and if the same be agreed to by three-fifths of all the members elected to each house, such proposed amendments shall be entered upon their respective Journals with the yeas and nays and shall be published in one newspaper in each county where a newspaper is published, for one month immediately preceding the next general election of Representatives, at which election the same shall be submitted to the electors of the State, for approval or rejection. If a majority of the electors voting upon the amendments at such election shall adopt the amendments the same shall become a part of the Constitution. The proposed amendments shall be so submitted as to enable the electors to vote on each amendment separately. All amendments adopted at the election at which this is submitted or heretofore adopted by the electors are hereby declared a part of the Constitution from the date of the adoption of the same.

Approved June 6, 1905.

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The Constitution of the United States of America.*

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Chisholm *v.* Georgia, 2 Dall., 419; McCulloch *v.* State of Maryland et al., 4 Wh., 316; Brown et als. *v.* Maryland, 12 Wh., 419; Barron *v.* The Mayor and City Council of Baltimore, 7 Pet., 243; Lane County *v.* Oregon, 7 Wall., 71; Texas *v.* White et al., 7 Wall., 700.

ARTICLE 1.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Hayburn's Case (notes), 2 Dall., 409.

Section 2. [1]The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

In re Green, 134 U. S., 377; Wiley *v.* Sinkler, 179 U. S., 58.

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*In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstaces of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and after-

[2]No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3]†[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Veazie Bank *v.* Fenno, 8 Wall., 533; Scholey *v.* Rew, 23 Wall., 331; Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429.

[4]When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

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wards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 2, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

†The clause included in brackets is amended by the fourteenth amendment, second section.

[5]The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. [1]The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

[2]Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

[3]No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4]The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5]The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6]The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

[7]Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. [1]The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof: but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Ex parte Siebold, 100 U. S., 371; Ex parte Yarborough, 110 U. S., 651.

[2]The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. [1]Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of

absent Members, in such Manner and under such Penalties as each House may provide.

In re Loney, 134 U. S., 372.

[2]Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Anderson *v.* Dunn, 6 Wh., 204; Kilbourn *v.* Thompson, 103 U. S., 168; U. S. *v.* Bollin, 144 U. S., 1.

[3]Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall at the Desire of one-fifth of those Present, be entered on the Journal.

[4]Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. [1]The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Coxe *v.* M'Clenachan, 3 Dall., 478.

[2]No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. [1]All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2]Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a

[2]The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

United States *v.* Hamilton, 3 Dall., 17; Hepburn et al. *v.* Ellzey, 2 Cr., 445; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Kearney, 7 Wh., 38; Ex parte Tobias Watkins, 3 Pet., 192; Ex parte Milburn, 9 Pet., 704; Holmes *v.* Jennison et al., 14 Pet., 540; Ex parte Dorr, 3 How., 103; Luther *v.* Borden, 7 How., 1; Ableman *v.* Booth and United States v. Booth, 21 How., 506; Ex parte Vallandigham, 1 Wall., 243; Ex parte Mulligan, 4 Wall., 2; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; Tarble's Case, 13 Wall., 397; Ex parte Lange, 18 Wall., 16; Ex parte Parks, 93 U. S., 18; Ex parte Karstendick, 93 U. S., 396; Ex parte Virginia, 100 U. S., 339; In re Neagle, 135 U. S., 1; In re Duncan, 139 U. S., 449.

[3]No Bill of Attainder or ex post facto Law shall be passed.

Fletcher *v.* Peck, 6 Cr., 87; Ogden *v.* Saunders, 12 Wh., 213; Watson et al. *v.* Mercer, 8 Pet., 88; Carpenter et al. *v.* Commonwealth of Pennsylvania, 17 How. 456; Locke *v.* New Orleans, 4 Wall., 172; Cummings *v.* The State of Missouri, 4 Wall., 277; Ex parte Garland, 4 Wall., 333; Drenham, *v.* Stifle, 8 Wall., 595; Klinger *v.* State of Missouri, 13 Wall., 257; Pierce *v.* Carskadon, 16 Wall., 234; Holden *v.* Minnesota, 137 U. S., 483; Cook *v.* U. S., 138 U. S., 157.

[4]No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

License Tax Cases, 5 Wall., 462; Springer *v.* United States, 102 U. S., 586; Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429; Nicol *v.* Ames, 173 U. S. 509.

[5]No Tax or Duty shall be laid on Articles exported from any State.

Cooley *v.* Board of Wardens of Port of Philadelphia, 12 How., 299; Page *v.* Burgess, collector, 92 U. S., 372; Turpin *v.* Burgess, 117 U. S., 504; Pittsburg & Southern Coal Co. *v.* Bates, 156 U. S., 577.

[6]No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Cooley *v.* Board of Wardens of Port of Philadelphia et al., 12 How., 299; State of Pennsylvania *v.* Wheeling and Belmont Bridge Company et al., 18 How., 421; Munn *v.* Illinois, 94 U. S., 113; Packet Co. *v.* St. Louis, 100 U. S., 413; Packet Co. *v.* Catlettsburg, 105 U. S., 559; Morgan S. S. Co. *v.* La. Board of Health, 118 U. S., 455.

[7]No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8]No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. [1]No State shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; [1] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, [2] or

Law impairing the Obligation of Contracts, [3] or grant any Title of Nobility.

[2] Calder and Wife *v.* Bull and Wife, 3 Dall., 386; [3] Fletcher *v.* Peck, 6 Cr., 87; [3] State of New Jersey *v.* Wilson, 7 Cr., 164; [3] Sturgis *v.* Crowninshield, 4 Wh., 122; [3] McMillan *v.* McNeil, 4 Wh., 209; [3] Dartmouth College *v.* Woodward, 4 Wh., 518; [3] Owings *v.* Speed, 5 Wh., 420; [3] Farmers and Merchants' Bank *v.* Smith, 6 Wh., 131 [3] Green et al. *v.* Biddle, 8 Wh., 1; [3] Ogden *v.* Saunders, 12 Wh., 213; [3] Mason *v.* Haile, 12 Wh., 370; [3] Satterlee *v.* Matthewson, 2 Pet., 380; [3] Hart *v.* Lamphire, 3 Pet., 280; [1] Craig et al. *v.* State of Missouri, 4 Pet., 410; [3] Providence Bank *v.* Billings and Pitman, 4 Pet., 514; [1] Byrne *v.* State of Missouri, 8 Pet., 40; [2] Watson *v.* Mercer, 8 Pet., 88; [3] Mumma *v.* Potomac Company, 8 Pet., 281; [3] Beers *v.* Haughton, 9 Pet., 329; [1] Briscoe et al. *v.* The Bank of the Commonwealth of Kentucky, 11 Pet., 257; [3] The Proprietors of Charles River Bridge *v.* The Proprietors of Warren Bridge, 11 Pet., 420; [3] Armstrong *v.* The Treasurer of Athens Company, 16 Pet., 281; [3] Bronson *v.* Kinzie et al. 1 How., 311; [3] McCracken *v.* Hayward, 2 How., 608; [3] Gordon *v.* Appeal Tax Court, 3 How., 133; [3] State of Maryland *v.* Baltimore and Ohio R. R. Co., 3 How., 534; [3] Neil, Moore & Co., *v.* State of Ohio, 3 How., 720; [3] Cook *v.* Moffatt, 5 How., 295; [3] Planters' Bank *v.* Sharp et al., 6 How., 301; [3] West River Bridge Company *v.* Dix et al., 507; [3] Crawford et al. *v.* Branch Bank of Mobile, 7 How., 279; [3] Woodruff *v.* Trapnall, 10 How., 190; [3] Paup et al. *v.* Drew, 10 How., 218; [2] [3] Baltimore and Susquehanna R. R. Co. *v.* Nesbitt et al., 10 How., 395; [3] Butler et al. *v.* Pennsylvania, 10 How., 402; [1] Darrington et al. *v.* The Bank of Alabama, 13 How., 12; [3] Richmond, etc., R. R. Co. *v.* The Louise R. R. Co., 13 How., 71; [3] Trustee for Vincennes University *v.* State of Indiana, 14 How., 268; [3] Curran *v.* State of Arkansas et al., 15 How., 304; [3] State Bank of Ohio *v.* Knoop, 16 How., 369; [2] Carpenter et al. *v.* Commonwealth of Pennsylvania, 17 How., 456; [3] Dodge *v.* Woolsey, 18 How., 331; [3] Beers *v.* State of Arkansas, 20 How., 527; [3] Aspinwall et al. *v.* Commissioners of County of Daviess, 22 How., 364; [3] Rector of Christ Church, Philadelphia, *v.* County of Philadelphia, 24 How., 300; [3] Howard *v.* Bugbee, 24 How., 461; [3] Jefferson Branch Bank *v.* Skelley, 1 Black, 436; [3] Franklin Branch Bank *v.* State of Ohio, 1 Black, 474; [3] Trustees of the Wabash and Erie Canal Company *v.* Beers, 2 Black, 448; [3] Gillman *v.* City of Sheboygan, 2 Black, 510; [3] Bridge Proprietors *v.* Hoboken Company, 1 Wall., 116; [3] Hawthorne *v.* Calef, 2 Wall., 10; [3] The Binghamton Bridge, 3 Wall., 51; [3] The Turnpike Company *v.* The State, 3 Wall., 210; [2] Locke *v.* City of New Orleans, 4 Wall., 172; [3] Railroad Company *v.* Rock, 4 Wall., 177; [3] Cummings *v.* State of Missouri, 4 Wall., 277; [2] Ex parte Garland, 4 Wall., 333; [3] Von Hoffman *v.* City of Quincy, 4 Wall., 535; [3] Mulligan *v.* Corbin, 7 Wall, 487; [3] Furman *v.* Nichol, 8 Wall., 44; [3] Home of the Friendless *v.* Rouse, 8 Wall., 430; [3] The Washington University *v.* Rouse, 8 Wall., 439; [3] Butz *v.* City of Muscatine, 8 Wall., 575; [3] Drehman *v.* Stifle, 8 Wall., 595; [3] Hepburn *v.* Griswold, 8 Wall., 603; [2] Gut *v.* The State, 9 Wall., 35; [3] Railroad Company *v.* McClure, 10 Wall., 511; [3] Parker *v.* Davis, 12 Wall., 457; [3] Curtis *v.* Whiting, 13 Wall., 68; [3] Pennsylvania College Cases, 3 Wall., 190; [3] Wilmington R. R. *v.* Reid, sheriff, 13 Wall., 264; [3] Salt Company *v.* East Saginaw, 13 Wall., 373; [3] White *v.* Hart, 13 Wall 646; [3] Osborn *v.* Nicholson et al., 13 Wall., 654; [3] Railroad Company *v.* Johnson, 15 Wall., 195; [3] Case of the State Tax on Foreign-held Bonds, 15 Wall., 300; [3] Tomlinson *v.* Jessup, 15 Wall., 454; [3] Tomlinson *v.* Branch, 15 Wall., 460; [3] Miller *v.* The State, 15 Wall., 478; [3] Holyoke Company *v.* Lyman, 15 Wall., 500; [3] Gunn *v.* Barry, 15 Wall., 610; [3] Humphrey *v.* Pegues, 16 Wall., 244; [3] Walker *v.* Whitehead, 16 Wall., 314; [3] Sohn *v.* Waterson, 17 Wall., 596; [3] Barings *v.* Dabney, 19 Wall., 1; [3] Head *v.* The University, 19 Wall., 526; [3] Pacific R. R. Co. *v.* Maguire, 20 Wall., 36; [3] Garrison *v.* The City of New York, 21 Wall., 196; [3] Ochiltree *v.* The Railroad Company, 21 Wall., 249; [3] Wilmington, &c., Railroad *v.* King, ex., 91 U. S.,3; [3] County of Moultrie *v.* Rockingham Ten Cent Savings Bank, 92 U. S., 631; [3] Home Insurance Company *v.* City Council of Augusta, 93 U. S., 116; [3] West Wisconsin R. R. Co. *v.* Supervisors, 93 U. S., 595; Murray *v.* Charleston, 96 U. S., 432; Edwards *v.* Kearzey, 96 U. S., 595; Keith *v.* Clark, 97 U. S., 454; Railroad Co. *v.* Georgia, 98 U. S., 359; Railroad Co. *v.* Tennessee, 101 U. S., 337; Wright *v.* Nagle 101 U. S., 791; Stone *v.* Mississippi, 101 U. S., 814; Rail-

road Co. *v.* Alabama, 101 U. S., 832; Louisiana *v.* New Orleans, 101 U. S., 203; Hall *v.* Wisconsin, 103 U. S., 5; Pennyman's Case, 103 U. S., 714; Guaranty Co. *v.* Board of Liquidation, 105 U. S., 622; Greenwood *v.* Freight Co., 105 U. S., 13; Kring *v.* Missouri, 107 U. S., 221; Louisiana *v.* New Orleans, 109 U. S., 285; Gilfillan *v.* Union Canal Co., 109 U. S., 401; Nelson *v.* St. Martin's Parish, 111 U. S., 716; Chic Life Ins. Co. *v.* Needles, 113 U. S., 574; Virginia Coupon Cases, 114 U. S., 270; Amy *v.* Shelby Co., 114 U. S., 387; Effinger *v.* Kenney, 115 U. S., 566; N. Orleans Gas Co. *v.* La. Light Co., 115 U. S., 650; N. Orleans Water Works *v.* Rivers, 115 U. S., 674; Louisville Gas Co. *v.* Citizens' Gas Co., 115 U. S., 683; Fisk *v.* Jefferson Police Jury, 116 U. S., 131; Stone *v.* Farmers' Loan and Trust Co., 116 U. S. 307; Stone *v.* Ill. Central R. R. Co., 116 U. S., 347; Royall *v.* Virginia, 116 U. S., 572; St. Tammany Water Works *v.* N. Orleans Water Works, 120 U. S., 64; Church *v.* Kelsey, 121 U. S., 282; Lehigh Water Co. *v.* Easton, 121 U. S., 388; Seibert *v.* Lewis, 122 U. S., 284; N. Orleans Water Works *v.* La. Sugar Ref. Co., 125 U. S., 18; Haynard *v.* Hill., 125 U. S., 140; Jaehne *v.* N. Y., 128 U. S., 189; Denny *v.* Bennett, 128 U. S., 489; Chinese Ex. Case, 130 U. S., 588; Williamson *v.* N. J., 130 U. S., 189; Hunt *v.* Hunt, 131 U. S., clxv; Freeland *v.* Williams, 131 U. S., 405; Campbell *v.* Wade, 134 U. S., 34; Penna. R. Rd. Co. *v.* Miller, 134 U. S., 75; Hans *v.* Louisiana, 134 U. S., 1; North Carolina *v.* Temple, 134 U. S., 22; Crenshaw *v.* U. S., 134 U. S., 99; Louisiana ex rel. The N. Y. Guaranty and Indemnity Co. *v.* Steele, 134 U. S., 280; Minneapolis Eastern Rwy. Co. *v.* Minnesota, 134 U. S., 467; Hill *v.* Merchants' Ins. Co., 134 U. S. 515; Medley, petitioner, 134 U. S., 160; Cherokee Nation *v.* Kansas Ry. Co., 135 U. S., 641; Virginia Coupon Cases, 135 U. S., 662; Mormon Church *v.* U. S., 136 U. S., 1; Wheeler *v.* Jackson, 137 U. S., 245; Holden *v.* Minnesota, 137 U. S., 483; Sioux City Street Railway Co. *v.* Sioux City, 138 U. S., 98; Cook *v.* U. S., 138 U. S., 157; Belmont Bridge Co. *v.* Wheeling Bridge Co., 138 U. S., 287; Cook County *v.* Calumet and Chicago Canal Co., 138 U. S., 635; Pennoyer *v.* McConnaughy, 139 U. S., 1; Scotland County Court *v.* Hill. 139 U. S., 41; Scott *v.* Neely, 139 U. S., 106; Essex Public Road Board *v.* Shinkle, 140 U. S., 334; Stein *v.* Bienville Water Supply Co., 141 U. S., 67; Henderson Bridge Co. *v.* Henderson, 141 U. S., 679; New Orleans *v.* N. O. Water W'ks, 142 U. S., 79; Pacific Ex. Co. *v.* Seibert, 142 U. S., 339; N. O. City & Lake R. Rd. Co. *v.* New Orleans, 143 U. S., 192; Winona & St. Peter R. Rd. Co. *v.* Plainview, 143 U. S., 371; Louisville Water Co. *v.* Clark, 143 U. S., 1; N. Y. *v.* Squire, 145 U. S., 175; Brown *v.* Smart, 145 U. S., 454; Baker's Exrs. *v.* Kilgore, 145 U. S., 487; Morley *v.* Lake Shore & Mich. Southern Ry. Co., 146 U. S., 162; Hamilton, Ga., Ltd., Coke Co. *v.* Hamilton, 146 U. S., 258; Wilmington & Weldon R. Rd. Co. *v.* Alsbrook, 146 U. S., 279; Butley v. Gorley, 146 U. S., 303; Ills. Cent. R. Rd. *v.* Ills., 146 U. S., 387; Morley *v.* Lake Shore & Mich. So. Rwy. Co., 146 U. S., 162; Hamilton Gas L't Co. *v.* Hamilton City, 146 U. S., 258; Wil. & Wel. R. R. Co. *v.* Alsbrook, 146 U. S., 279; Ill. Cent. R. Rd. Co. *v.* Illinois, 146 U. S., 387; Bier *v.* McGehee, 148 U. S., 137; Schurz *v.* Cook, 148 U. S., 397; Eustis *v.* Bolles, 150 U. S., 361; Duncan *v.* Missouri, 152 U. S., 377; Israel *v.* Arthur, 152 U. S., 355; New Orleans *v.* Benjamin, 153 U. S., 411; Eagle Ins. Co. *v.* Ohio, 153 U. S., 446; Erie R. Rd. *v.* Penna, 153 U. S., 628; Mobile & Ohio R. Rd. *v.* Tenn., 153 U. S., 486; Pittsburgh & So. Coal Co. *v.* La., 156 U. S., 590; U. S. ex rel. Siegel *v.* Thoman, 156 U. S., 353; City and Lake R. Rd. *v.* N. O., 157 U. S., 219; Central Land Co. *v.* Laidley, 159 U. S., 103; Winona & St. Peter Land Co. *v.* Minn., 159 U. S., 528; Bank of Commerce *v.* Tenn., 161 U. S., 134; Baltzer *v.* N. C. 161 U. S., 240; Woodruff *v.* Miss., 162 U. S., 291; Gibson *v.* Miss., 162 U. S., 565; Barnitz *v.* Beverly, 163 U. S., 118; Hanford *v.* Davies, 163 U. S., 273; Covington, &c., Turnpike Co. *v.* Sanford, 164 U. S., 578; St. Louis, &c., Ry. Co. *v.* Matthews, 165 U. S., 1; Allgeyer *v.* Louisiana, 165 U. S., 578; Water Power Co. *v.* Water Commissioners, 168 U. S., 349; Douglas *v.* Kentucky, 168 U. S., 488; Hawker *v.* New York, 170 U. S. 189; Galveston, &c., Ry. Co. *v.* Texas, 170 U. S., 226; Houston, &c., Ry. Co. *v.* Texas, 170 U. S., 243; Williams *v.* Eggleston, 170 U. S., 304; Thompson *v.* Utah, 170 U. S., 343; Chicago, &c., R. R. Co. *v.* Nebraska, 170 U. S., 57; Thompson *v.* Missouri, 171 U. S., 380; Walla Walla v. Walla Walla Water Co, 172 U. S., 1; McCollough *v.* Va., 172 U. S., 102; Covington *v.* Kentucky, 173 U. S., 231; Citizens Savings Bank *v.* Owens-

boro, 173 U. S., 636; Walsh *v.* Columbus, &c., R. R. Co., 176 U. S., 469; Stearns *v.* Minn., 179 U. S., 223.

[2]No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

McCulloch v. State of Maryland, 4 Wh., 316; Gibbons v. Ogden, 9 Wh., 1; Brown *v.* The State of Maryland, 12 Wh., 419; Mager v. Grima et al., 8 How., 490; Cooley *v.* Board of Wardens of Port of Philadelphia et al., 12 How., 299; Almy *v.* State of California, 24 How., 169; License Tax Cases, 5 Wall., 462; Crandall *v.* State of Nevada, 6 Wall., 35; Waring *v.* The Mayor, 8 Wall., 110; Woodruff *v.* Perham, 8 Wall., 123; Hinson *v.* Lott. 8 Wall., 148; State Tonnage Tax Cases, 12 Wall., 204; State Tax on Railway Gross Receipts, 15 Wall., 284; Inman Steamship Company v. Tinker, 94 U. S., 238; Cook *v.* Pennsylvania, 97 U. S., 566; Packet Co. *v.* Keokuk, 95 U. S., 80; People *v.* Compagnie Generale Transatlantique, 107 U. S., 59; Brown *v.* Houston, 114 U. S., 622; Pittsburgh & So. Coal Co. *v.* Bates, 156 U. S., 577; Pittsburgh & So. Coal Co. *v.* La., 156 U. S., 590; Patapsco Guano Co. *v.* N. C., 171 U. S., 345.

[3]No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Green *v.* Biddle, 8 Wh., 1; Poole et al. *v.* The Lessee of Fleeger et al., 11 Pet., 185; Cooley *v.* Board of Wardens of Port of Philadelphia et al., 12 How., 299; Peete *v.* Morgan, 19 Wall., 581; Cannon *v.* New Orleans, 20 Wall., 577; Inman Steamship Company *v.* Tinker, 94 U. S., 238; Packet Co. *v.* St. Louis, 100 U. S., 423; Packet Co. *v.* Keokuk, 95 U. S., 80; Vicksburg *v.* Tobin, 100 U. S., 430; Packet Co. *v.* Catlettsburg, 105 U. S., 559; Morgan Steamship Company *v.* Louisiana Board of Health, 118 U. S. 455; Ouachita Packet Co. *v.* Aiken, 121 U. S., 444; Huse *v.* Glover, 119 U. S., 543; Harmon *v.* Chicago, 147 U. S., 396; Va. *v.* Tenn., 148 U. S., 503; Wharton *v.* Wise, 153 U. S., 155; St. Louis, &c., Ry. Co. *v.* James, 161 U. S., 545.

ARTICLE II.

Section 1. [1]The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows:

[2]Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Chisholm, ex., *v.* Georgia, 2 Dall., 419; Leitensdorfer et al. *v.* Webb, 20 How., 176; Ex parte Siebold, 100 U. S., 271; McPherson *v.* Blacker, 146 U. S., 1.

*[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of

*This clause has been superseded by the twelfth amendment.

the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

[3]The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4]No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

English *v.* The Trustees of the Sailors' Snug Harbor, 3 Pet., 99.

[5]In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6]The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429.

[7]Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. [1]The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

United States *v.* Wilson, 7 Pet., 150; Ex parte William Wells, 18 How., 307; Ex parte Garland, 4 Wall., 333; Armstrong's Foundry, 6 Wall., 766; The Grape Shot, 9 Wall., 129; United States *v.* Padelford, 9 Wall., 542; United States *v.* Klein, 13 Wall., 128; Armstrong *v.* The United States, 13 Wall., 152; Pargoud *v.* The United States, 13 Wall., 156; Hamilton *v.* Dillin, 21 Wall., 73; Mechanics and Traders' Bank *v.* Union Bank, 22 Wall., 276; Lamar, ex., *v.* Browne et al., 92 U. S., 187; Wallach et al. *v.* Van Riswick, 92 U. S., 202.

[2]He shall have Power, by and with the advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Ware *v.* Hylton et al., 3 Dall., 199; Marbury *v.* Madison, 1 Cr., 137; United States *v.* Kirkpatrick, 9 Wh., 720; American Insurance Company *v.* Canter (356 bales cotton), 1 Pet., 511; Foster and Elam *v.* Neilson, 2 Pet., 253; Cherokee Nation *v.* State of Georgia, 5 Pet., 1; Patterson *v.* Gwinn et al., 5 Pet., 233; Worcester *v.* State of Georgia, 6 Pet., 515; City of New Orleans *v.* De Armas et al., 9 Pet., 224; Holden *v.* Joy, 17 Wall., 211; Geofroy *v.* Riggs, 133 U. S., 258; Homer *v.* U. S., 143 U. S., 570; Shoemaker *v.* U. S., 147 U. S., 282; Parsons *v.* U. S., 167 U. S., 324.

[3]The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

The United States *v.* Kirkpatrick et al., 9 Wh., 720.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Marbury *v.* Madison, 1 Cr., 137; Kendall, Postmaster-General *v.* The United States, 12 Pet., 524; Luther *v.* Borden, 7 How., 1; The State of Mississippi *v.* Johnson, President, 4 Wall., 475; Stewart *v.* Kahn 11 Wall., 493; In re Neagle, 135 U. S., 1.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and

Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Chisholm, ex., *v.* Georgia, 2 Dall., 419; Stuart *v.* Laird, 1 Cr., 299; United States *v.* Peters, 5 Cr., 115; Cohens *v.* Virginia, 6 Cr., 264; Martin *v.* Hunter's Lessee, 1 Wh., 304; Osborn *v.* United States Bank, 9 Wh., 738; Benner et al. *v.* Porter, 9 How., 235; The United States *v.* Ritchie, 17 How., 525; Murray's Lessee et al. *v.* Hoboken Land and Improvement Company, 18 How., 272; Ex parte Vallandigham, 1 Wall., 243; Ames *v.* Kansas, 111 U. S., 449; In re Ross, 140 U. S., 453; McAllister *v.* U. S., 141 U. S., 174; Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429; Robertson *v.* Baldwin, 165 U. S. 275.

Section 2. [1]The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controveries to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Hayburn's Case (note), 2 Dall., 410; Chisholm, ex., *v.* Georgia, 2 Dall., 419; Glass et al. *v.* Sloop Betsey, 3 Dall., 6; United States *v.* La Vengeance, 3 Dall., 297; Hollingsworth et al. *v.* Virginia, 3 Dall., 378; Mossman, ex., *v.* Higginson, 4 Dall., 12; Marbury *v.* Madison, 1 Cr., 137; Hepburn et al. *v.* Ellzey, 2 Cr., 444; United States *v.* Moore, 3 Cr., 159; Strawbridge et al. *v.* Curtiss et al., 3 Cr., 267; Ex parte Bollman and Swartwout, 4 Cr., 75; Rose *v.* Himely, 4 Cr., 241; Chappedelaine et al. *v.* Dechenaux, 4 Cr., 305; Hope Insurance Company *v.* Boardman et al., 5 Cr., 57; Bank of United States *v.* Devaux et al., 5 Cr., 61; Hodgson et al. *v.* Bowerbank et als., 5 Cr., 303; Owings *v.* Norwood's Lessee, 5 Cr., 344; Durousseau *v.* The United States, 6 Cr., 307; United States *v.* Hudson and Goodwin, 7 Cr., 32; Martin *v.* Hunter, 1 Wh., 304; Colson et al. *v.* Lewis, 2 Wh., 377; United States *v.* Bevans, 3 Wh., 336; Cohens *v.* Virginia, 6 Wh., 264; Ex parte Kearney, 7 Wh., 38; Matthews *v.* Zane, 7 Wh., 164; Osborn *v.* United States Bank, 9 Wh., 738; United States *v.* Ortega, 11 Wh., 467; American Insurance Company *v.* Canter (356 bales cotton), 1 Pet., 511; Jackson *v.* Twentyman, 2 Pet., 136; Cherokee Nation *v.* State of Georgia, 5 Pet., 1; State of New Jersey *v.* State of New York, 5 Pet., 283; Davis *v.* Packard et al., 6 Pet., 41; United States *v.* Arredondo et al., 6 Pet., 691; Davis *v.* Packard et al., 7 Pet., 276; Breedlove et al. *v.* Nickolet et al., 7 Pet., 413; Brown *v.* Keene, 8 Pet., 112; Davis *v.* Packard et al., 8 Pet., 312; City of New Orleans *v.* De Armas et al., 9 Pet., 224; The State of Rhode Island *v.* The Commonwealth of Massachusetts, 12 Pet., 657; The Bank of Augusta *v.* Earle, 13 Pet., 519; The Commercial and Railroad Bank of Vicksburg *v.* Slocomb et al., 14 Pet., 60; Suydam et al. *v.* Broadnax, 14 Pet., 67; Prigg *v.* The Commonwealth of Pennsylvania, 16 Pet., 530; Louisville, Cincinnati and Charleston Railway Company *v.* Letson, 2 How., 497; Cary et als. *v.* Curtis, 3 How., 236; Warring *v.*

Clark, 5 How., 441; Luther *v.* Borden, 7 How., 1; Sheldon et al. *v.* Sill, 8 How., 441; The Propeller Genesee Chief *v.* Fitzhugh et al., 12 How., 443; Fretz et al. *v.* Ball et al., 12 How., 466; Neves et al. *v.* Scott et al., 13 How., 268; State of Pennsylvania *v.* The Wheeling, etc., Bridge Company et al., 13 How., 518; Marshall *v.* The Baltimore and Ohio R. R. Co., 16 How., 314; The United States *v.* Gutherie, 17 How., 284; Smith *v.* State of Maryland, 18 How., 71; Jones et al. *v.* League, 18 How., 76; Murray's Lessee et al. *v.* Hoboken Land and Improvement Company, 18 How., 272; Hyde et al. *v.* Stone, 20 How., 170; Irvine *v.* Marshall et al., 20 How.., 558; Fenn *v.* Holmes, 21 How., 481; Moorewood et al. *v.* Erequist, 23 How., 491; Commonwealth of Kentucky *v.* Dennison, governor, 24 How., 66; Ohio and Mississippi Railroad Company *v.* Wheeler, 1 Black, 286; The Steamer Saint Lawrence, 1 Black, 522; The Propeller Commerce, 1 Black, 574; Ex parte Vallandigham, 1 Wall., 243; Ex parte Milligan, 4 Wall., 1; The Moses Taylor, 4 Wall., 411; State of Mississippi *v.* Johnson, President, 4 Wall., 475; The Hine *v.* Trevor, 4 Wall., 555; City of Philadelphia *v.* The Collector, 5 Wall., 720; State of Georgia *v.* Stanton, 6 Wall., 50; Payne *v.* Hooks, 7 Wall., 425; The Alicia, 7 Wall., 571; Ex parte Yerger, 8 Wall., 85; Insurance Company *v.* Dunham, 11 Wall., 1; Virginia *v.* West Virginia, 11 Wall., 39; Coal Company *v.* Blatchford, 11 Wall., 172; Railway Company *v.* Whitton's Adm., 13 Wall., 270; Tarble's Case, 13 Wall., 397; Blyew et al. *v.* The United States, 13 Wall., 581; Davis *v.* Gray, 16 Wall., 203; Case of the Sewing Machine Companies, 18 Wall., 353; Insurance Company *v.* Morse, 20 Wall., 445; Vannevar *v.* Bryant, 21 Wall., 41; The Lottawanna, 21 Wall., 558; Gaines *v.* Fuentes et al., 92 U. S., 10; Miller *v.* Dows, 94 U. S., 444; Doyle *v.* Continental Insurance Company, 94 U. S., 535; Tennessee *v.* Davis, 100 U. S., 257; Baldwin *v.* Franks, 120 U. S., 678; Barron *v.* Burnside, 121 U. S., 186; St. Louis, Iron Mountain and Southern Railway *v.* Vickers, 122 U. S., 360; Chinese Ex. Case, 130 U. S., 581; Brooks *v.* Missouri, 124 U. S., 394; New Orleans Water Works *v.* Louisiana Sugar Refining Co., 125 U. S., 18; Spencer *v.* Merchant, 125 U. S., 345; Dale Tile Mfg. Co. *v.* Hyatt, 125 U. S., 46; Felix *v.* Scharnweber, 125 U. S., 54; Hannibal and St. Joseph R. R. *v.* Missouri River Packet Co., 125 U. S., 260; Kreiger *v.* Shelby R. R. Co., 125 U. S., 39; Craig *v.* Leitensdorfer, 127 U. S., 764; Jones *v.* Craig, 127 U. S., 213; Wisconsin *v.* Pelican Ins. Co., 127 U. S., 265; U. S. *v.* Beebe, 127 U. S., 338; Chinese Ex. Case, 130 U. S., 581; Lincoln County *v.* Luning, 133 U. S., 529; Christian *v.* Atlantic & N. C. R. Rd. Co., 1333 U. S., 233; Haus *v.* Louisiana, 134 U. S., 1; Louisiana ex rel, The N. Y Guaranty & Indemnity Co. *v.* Steele, 134 U. S., 280; Jones *v.* U. S., 137 U. S., 202; Manchester *v.* Mass., 139 U. S., 240; In re Ross, 140 U. S., 453; In re Garnett, 141 U. S., 1; U. S. *v.* Texas, 143 U. S., 621; Cooke *v.* Avery, 147 U. S., 374; S. Pac. Co. *v.* Denton, 146 U. S., 202; Lawton *v.* Steele, 152 U. S., 133; Interstate Com. Comsn. *v.* Brinson, 154 U. S., 447; Chappell *v.* U. S., 160 U. S., 499; St. Louis, etc., Ry. Co. *v.* James, 161 U. S., 545; Hanford *v.* Davies, 163 U. S., 273; Fallbrook Irrigation District *v.* Bradley, 164 U. S., 112; In re Lennon, 166 U. S. 548; Meyer *v.* Richmond, 172 U. S., 82; Henderson Bridge Co. *v.* Henderson City, 173 U. S., 592; La Abra Silver Mining Co. *v.* U. S., 175 U. S., 423; Louisiana *v.* Texas, 176 U. S., 1; Western Union Telegraph Co. *v.* Ann Arbor R. R. Co., 178 U. S., 239; Smith *v.* Reeves, 178 U. S., 436; Motes v. U. S., 178 U. S., 458; Wiley v. Sinkler, 179 U. S., 58.

[2]In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Chisholm, ex., *v.* Georgia, 2 Dall., 419; Wiscart et al. *v.* Dauchy, 3 Dall., 321; Marbury *v.* Madison, 1 Cr., 137; Durousseau et al. *v.* United States 6 Cr., 307; Martin *v.* Hunter's Lessee, 1 Wh., 304; Cohens *v.* Virginia, 6 Wh., 234; Ex parte Kearney, 7 Wh., 38; Wayman *v.* Southard, 10 Wh., 1; Bank of the United States *v.* Halstead, 10 Wh., 51; United States *v.* Ortega, 11 Wh., 467; The Cherokee Nation *v.* the State of Georgia, 5 Pet., 1; Ex parte Crane et als., 5 Pet., 189; The State of New Jersey *v.* The

State of New York, 5 Pet., 283; Ex parte Sibbald *v.* United States, 12 Pet., 488; The State of Rhode Island *v.* The State of Massachusetts, 12 Pet., 657; State of Pennsylvania *v.* the Wheeling, &c., Bridge Company, 13 How., 518; In re Kaine, 14 How., 103; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Freeborn *v.* Smith, 2 Wall., 160; Ex parte McCardle, 6 Wall., 318; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; The Lucy, 8 Wall., 307; The Justices *v.* Murray, 9 Wall., 274; Pennsylvania *v.* Quicksilver Company, 10 Wall., 553; Murdock *v.* City of Memphis, 20 Wall., 590; Bors *v.* Preston, 111 U. S., 252; Ames *v.* Kansas, 111 U. S., 449; Clough *v.* Curtis, 134 U. S., 361; In re Neagle, 135 U. S., 1; Mobile & Ohio R. Rd. *v.* Tenn., 153 U. S., 486; Woodruff *v.* Miss., 162 U. S., 291; McCullough *v.* Va., 172 U. S., 102.

[3]The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Ex parte Milligan, 4 Wall., 2; Ellenbecker *v.* Plymouth County, 134 U. S., 31; Cook *v.* U. S., 138 U. S., 157; In re Ross, 140 U. S., 453.

Section 3. [1]Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

United States *v.* The Insurgents, 2 Dall., 335; United States *v.* Mitchell, 2 Dall., 348; Ex parte Bollman and Swartwout, 4 Cr., 75; United States *v.* Aaron Burr, 4 Cr., 469.

[2]The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Bigelow *v.* Forest, 9 Wall., 339; Day *v.* Micou, 18 Wall., 156; Ex parte Lange, 18 Wall., 163; Wallach et al. *v.* Van Riswick, 92 U. S., 202.

ARTICLE IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Mills *v.* Duryee, 7 Cr., 481; Hampton *v.* McConnel, 3 Wh., 234; Mayhew *v.* Thatcher, 6 Wh., 129; Darby's Lessee *v.* Mayer, 10 Wh., 465; The United States *v.* Amedy, 11 Wh., 392; Caldwell et al. *v.* Carrington's Heirs, 9 Pet., 86; M'Elmoyle *v.* Cohen, 13 Pet., 312; The Bank of Augusta *v.* Earle, 13 Pet., 519; Bank of the State of Alabama *v.* Dalton, 9 How., 522; D'Arcy *v.* Ketchum, 11 How., 165; Christmas *v.* Russell, 5 Wall., 290; Green *v.* Van Buskirk, 7 Wall., 139; Paul *v.* Virginia, 8 Wall., 168; Board of Public Works *v.* Columbia College, 17 Wall., 521; Thompson *v.* Whitman, 18 Wall., 457; Bonaparte *v.* Tax Court, 104 U. S., 592; Hanley *v.* Donoghue, 116 U. S., 1; Renaud *v.* Abbott, 116 U. S., 277; Chic. and Alton R. R. *v.* Wiggins Ferry Co., 119 U. S. 615; Cole *v.* Cunningham, 133 U. S., 107; Blount *v.* Walker, 134 U. S., 607; Texas & Pacific Ry. Co. *v.* Southern Pacific Co., 137 U. S., 48; Simmons *v.* Saul, 138 U. S. 439; Reynolds *v.* Stockton, 140 U. S., 254; Carpenter *v.* Strange, 141 U. S., 87; Glenn *v.* Garth, 147 U. S., 360; Huntington *v.* Allrill, 146 U. S., 657; Laing *v.* Rigney, 160 U. S., 531; Chicago, &c., Ry. Co. *v.* Sturm, 174 U. S., 710; Thormann *v.* Frame, 176 U. S., 350; Hancock Ntl. Bank *v.* Farnum, 176 U. S., 640; Clark *v.* Clarke, 178 U. S., 186.

Section 2. [1]The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Bank of United States *v.* Devereux, 5 Cr., 61; Gassies *v.* Ballou, 6 Pet., 761; The State of Rhode Island *v.* The Commonwealth of Massachusetts, 12 Pet., 657; The Bank of Augusta *v.* Earle, 13 Pet., 519; Moore *v.* The People of the State of Illinois, 14 How., 13; Conner et al. *v.* Elliot et al., 18 How, 591; Dred Scott *v.* Sanford, 19 How., 393; Crandall *v.* State of Nevada, 6 Wall, 35; Woodruff *v.* Parham, 8 Wall., 123; Paul *v.* Virginia, 8 Wall., 168; Downham *v.* Alexandria Council, 10 Wall., 173; Liverpool Insurance Company *v.* Massachusetts, 10 Wall., 566; Ward *v.* Maryland, 12 Wall., 418; Slaughterhouse Cases, 16 Wall., 36; Bradwell *v.* The State, 16 Wall., 130; Chemung Bank *v.* Lowery, 93 U. S., 72; McCready *v.* Virginia, 94 U. S., 391; Brown *v.* Houston, 114 U. S., 622; Pembina Mining Co. *v.* Penna., 125 U. S., 181; Kimmish, *v.* Ball, 129 U. S., 217; Cole *v.* Cunningham, 133 U. S., 107; Leisy *v.* Hardin, 135 U. S., 100; Minnesota *v.* Barber 136 U. S., 313; McKane *v.* Durston, 153 U. S., 684; Pittsburgh & So. Coal Co. *v.* Bates, 156 U. S., 577; Blake *v.* McClung, 172 U. S., 239; Blake *v.* McClung, 176 U. S., 59; Sully *v.* Am. Ntl Bank, 178 U. S., 289; Reymann Brewing Co. *v* Brister, 179 U. S., 445.

[2]A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Holmes *v.* Jennison et al., 14 Pet., 540; Commonwealth of Kentucky *v.* Dennison, governor, 24 How., 66; Taylor *v.* Tainter, 16 Wall., 366; Lascelles *v.* Georgia, 148 U. S., 537; Pearce *v.* Texas, 155 U. S., 311.

[3]No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in consequence of any Law, or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or labor may be due.

Prigg *v.* The Commonwealth of Pennsylvania, 16 Pet.,, 539; Jones *v.* Van Zandt, 5 How., 215; Strader et al. *v.* Graham, 10 How., 82; Moore *v.* The People of the State of Illinois, 14 How., 13; Dred Scott *v.* Sanford, 19 How., 393; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Callan *v.* Wilson, 127 U. S., 540; Nashville, Chattanooga, etc., Rwy. *v.* Alabama, 128 U. S., 96.

Section 3. [1]New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

American Insurance Company et al. *v.* Canter (356 bales cotton), 1 Pet., 511; Pollard's Lessee *v.* Hagan, 3 How., 212; Cross et al., *v.* Harrison, 16 How., 164.

[2]The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

McCulloch *v.* State of Maryland, 4 Wh., 316; American Insurance Company *v.* Canter, 1 Pet., 511; United States *v.* Gratiot et al., 14 Pet., 526; United States *v.* Rogers, 4 How., 567; Cross et al. *v.* Harrison, 16 How., 164; Muckey et al. *v.* Coxe, 18 How., 100; Gibson *v.* Chouteau, 13 Wall., 92; Clinton *v.* Englebert, 13 Wall., 434; Beall *v.* New

Mexico, 16 Wall., 535; Davis *v.* Beason, 133 U. S., 333; Wisconsin Central R. Rd. Co. *v.* Price County, 133 U. S., 496; Cope *v.* Cope, 137 U. S., 682; Mormon Church *v.* U. S. 136 U. S., 1.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (When the Legislature cannot be convened), against domestic Violence.

Luther *v.* Borden, 7 How., 1; Texas *v.* White, 7 Wall., 700.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Hollingsworth et al. *v.* Virginia, 3 Dallas, 378.

ARTICLE VI.

[1]All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2]This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Hayburn's Case, 2 Dall., 409; Ware *v.* Hylton, 3 Dall., 199; Calder and Wife *v.* Bull and Wife, 3 Dall., 386; Marbury *v.* Madison, 1 Cr., 137; Chirac *v.* Chirac, 2 Wh., 259; McCulloch *v.* The State of Maryland, 4 Wh., 316; Society *v.* New Haven, 8 Wh., 464; Gibbons *v.* Ogden, 9 Wh., 1; Foster and Elam *v.* Neilson, 2 Pet., 253; Buckner *v.* Finley, 2 Pet., 586; Worcester *v.* State of Georgia, 6 Pet., 515; Kennett et al. *v.* Chambers, 14 How., 38; Lodge *v.* Woolsey, 18 How., 331; State of New York *v.* Dibble, 21 How., 366; Ableman *v.* Booth and United States *v.* Booth, 21 How., 506; Sinnot *v.* Davenport, 22 How, 227; Foster *v.* Davenport, 22 How, 244; Haver v. Yaker 9 Wall., 32; Whitney *v.* Robertson, 124 U. S., 190; In re Neagle, 135 U. S., 1; Cherokee Nation *v.* Kansas Ry. Co., 135 U. S., 641; Cook Co. *v.* Calumet & Chicago Canal Co., 138 U. S., 635; Gulf, Colorado & Santa Fe Rwy. Co. *v.* Hefley, 158 U. S., 98; In re Quarles *v.* Butler, 158 U. S., 532.

[3]The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Ex parte Garland, 4 Wall., 333; Davis *v.* Beason, 133 U. S., 333.

ARTICLE VII.

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth. **In Witness** whereof We have hereunto subscribed our Names,

G^{o} WASHINGTON
Presidt and deputy from Virginia

New Hampshire.

JOHN LANGDON — NICHOLAS GILMAN

Massachusetts.

NATHANIEL GORHAM — RUFUS KING

Connecticut.

WM SAML JOHNSON — ROGER SHERMAN

New York.

ALEXANDER HAMILTON

New Jersey.

WIL: LIVINGSTON — WM PATTERSON
DAVID BREARLEY — JONA: DAYTON

Pennsylvania.

B. FRANKLIN — THOMAS MIFFLIN
ROBT. MORRIS — GEO. CLYMER
THOS. FITZSIMONS — JARED INGERSOLL
JAMES WILSON — GOUV MORRIS

Delaware.

GEO: READ — GUNNING BEDFORD jun
JOHN DICKINSON — RICHARD BASSETT
JACO: BROOM

Maryland.

JAMES MCHENRY — DAN: of ST THOS JENIFER
DANL CARROLL

Virginia.

JOHN BLAIR — JAMES MADISON Jr.

North Carolina.

WM BLOUNT — RICHD DOBBS SPAIGHT
HU WILLIAMSON

South Carolina.

J. RUTLEDGE — CHARLES COTESWORTH PINCKNEY
CHARLES PINCKNEY — PIERCE BUTLER

Georgia.

WILLIAM FEW — ABR BALDWIN

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[Ellenbecker *v.* Plymouth County, 134 U. S., 3.]

ARTICLE I.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Terret et al. *v.* Taylor et al., 9 Cr., 43; Vidal et al. *v.* Girard et al., 2 How., 127; Ex parte Garland, 4 Wall., 333; United States *v.* Cruikshank et al., 92 U. S., 542; Reynolds *v.* United States, 98 U. S., 145; Davis *v.* Beason, 133 U. S., 333; In re Rapier, 143 U. S., 110; Homer *v.* U. S., 143 U. S., 192; Bradfield *v.* Roberts, 175 U. S., 291.

ARTICLE II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Presser v. Illinois, 116 U. S., 252.

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* The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legishlatures of Connecticut, Georgia and Massachusetts ratified them.

ARTICLE III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Smith *v.* State of Maryland, 18 How., 71; Murray's Lessee et al. *v.* Hoboken Land and Improvement Company, 18 How., 272; Ex parte Milligan, 4 Wall., 2; Boyd *v.* United States, 116 U. S., 616; Fong Yuen Ting *v.* U. S., 149 U. S., 698.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States *v.* Perez, 9 Wh., 579; Barron *v.* The City of Baltimore, 7 Pet., 243; Fox. *v.* Ohio, 5 How., 410; West River Bridge Company *v.* Dix et al., 6 How., 507; Mitchell *v.* Harmony, 13 How., 115; Moore, ex., *v.* The People of the State of Illinois, 14 How., 13; Murray's Lessee et al., *v.* Hoboken Land and Improvement Company, 18 How., 272; Dynes *v.* Hoover, 20 How., 65; Withers *v.* Buckley et al., 20 How., 84; Gilman *v.* The City of Sheboygan, 2 Black, 510; Ex parte Milligan, 4 Wall., 2; Twitchell *v.* The Commonwealth, 7 Wall., 321; Hepburn *v.* Griswold, 8 Wall., 603; Miller *v* United States, 11 Wall., 268; Legal Tender Cases, 12 Wall 457; Pumpelly *v.* Green Bay Company, 13 Wall., 166; Osborne *v.* Nicholson, 13 Wall., 654; Ex parte Lange, 18 Wall., 163; Kohl et al. *v.* United States, 91 U. S., 367; Cole *v.* La Grange, 113 U. S., 1; Ex parte Wilson, 114 U. S., 417; Browne *v.* Grant, 116 U. S., 207; Boyd *v.* United States, 116 U. S.' 616; Makin v. United States, 117 U. S., 348; Ex parte Bain, 121 U. S., 1; Parkinson *v.* United States, 121 U. S., 281; Spies *v.* Illinois, 123 U. S., 131; Sands *v.* Manistee River Improvement Company, 123 U. S., 288; Mugler *v.* Kansas, 123 U. S., 623; Great Falls Manufacturing Company *v.* The Attorney-General, 124 U. S., 581; United States *v.* De Walt, 128 U. S., 393; Huling *v.* Kaw Valley Railway and Improvement Company, 130 U. S., 559; Freeland *v.* Williams, 131 U. S., 405; Cross *v.* North Carolina, 132 U. S., 131; Manning *v.* French, 133 U. S., 186; Searle *v.* School Dist. No. 2, 133 U. S. 533; Palmer *v.* McMahon, 133 U. S., 660; Ellenbecker *v.* Plymouth County, 134 U. S., 31; Chic., Mil & St. Paul Rwy Co. *v.* Minnesota, 134 U. S., 418; Wheeler *v.* Jackson, 137 U. S., 245; Holden *v.* Minnesota, 137 U. S., 245; Caldwell *v.* Texas, 137 U. S., 692; Cherokee Nation *v* Kansas Ry. Co., 135 U. S., 641; Kaukauna Water Power Co. *v.* Miss. Canal Co., 142 U. S., 254; New Orleans *v.* N. O. Water W'ks, 142 U. S., 79; Counselman *v.* Hitchcock, 142 U. S., 547; Simmonds *v.* U. S., 142 U. S., 148; Horn Silver Mining Co. *v.* N. Y., 143 U. S., 305; Halinger *v.* Davis, 146 U. S., 314; Shoemaker *v.* U. S., 147 U. S., 282; Thorington

v. Montgomery, 147 U. S., 490; Yesler *v.* Wash'n Harbor Line Coms'rs, 146 U. S., 646; Monongahela Nav. Co. *v.* U. S., 148, U. S., 312; Fong Yuen Ting *v.* U. S., 149 U S, 698; In re Lennon, 150 U. S., 393; Pitts., C., C. & St. L. *v.* Backus, 154 U. S., 421; Interstate Com. Comsn *v.* Brimson, 154 U. S.; 447; Pearce *v.* Texas, 155 U. S., 311; Linford *v.* Ellison, 155 U. S., 503; Andrews *v.* Swartz, 156 U. S., 272; Pittsburgh & Southern Coal Co. *v.* La, 156 U. S., 590; St. L. & S. F. Rwy. Co. *v.* Gill, 156 U. S., 649; Johnson *v* Sayre, 158 U. S., 109; Sweet *v.* Rechel, 159 U. S., 380; Brown *v.* Walker, 161 U. S., 591; Wong Wing *v.* U. S., 163 U. S., 228; Talton *v.* Maves, 163 U. S., 376; Robertson *v.* Baldwin, 165 U. S., 275; Bauman *v.* Ross, 167 U. S., 548; Wilson *v.* Lambert, 168 U. S., 611; Tinsley *v.* Anderson, 171 U. S., 101; Green Bay &c. Canal Co. *v.* Patten Paper Co., 172 U. S., 58; Norwood *v.* Baker, 172 U. S., 269; Scranton *v.* Wheeler, 179 U. S., 141.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States *v.* Cooledge, 1 Wh., 415; Exparte Kearney, 7 Wh., 38; United States *v.* Mills, 7 Pet., 142; Barron *v.* City of Baltimore, 7 Pet., 243; Fox *v.* Ohio, 5 How., 410; Withers *v.* Buckley et al. 20 How., 84; Ex parte Milligan, 4 Wall., 2; Twitchell *v.* the Commonwealth, 7 Wall., 321; Miller *v.* The United States, 11 Wall., 268; United States *v.* Cook, 17 Wall., 168; United States *v.* Cruikshank et al., 92 U. S., 542; Spies *v.* Illinois, 123 U. S., 131; Ellenbecker *v.* Plymouth Co., 134 U. S., 31; Jones *v.* U. S., 137 U. S., 202; Cook *v.* U. S., 138 U. S., 157; In re Ross, 140 U. S., 453; Hallinger *v.* Davis, 146 U. S., 314; Mattox *v.* U. S., 156 U. S., 237; Bergemann *v.* Becker, 157 U. S., 655; Rosen *v.* U. S., 161 U. S., 29; United States *v.* Zucker, 161 U. S., 475; Wong Wing *v.* U. S., 163 U. S., 228; Motes *v.* U. S., 178 U. S., 458.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

United States *v.* La Vengeance, 3 Dall., 297; Bank of Columbia *v.* Oakley, 4 Wh., 235; Parsons *v.* Bedford et al., 3 Pet., 433; Lessee of Livingston *v.* Moore et al., 7 Pet., 469; Webster *v.* Reid, 11 How., 437; State of Pennsylvania *v.* The Wheeling, &c., Bridge Company et al., 13 How., 518; The Justices *v.* Murray, 9 Wall., 274; Edwards *v.* Elliott, et al., 21 Wall., 532; Pearson *v.* Yewdall, 95 U. S., 294; McElrath *v.* United States, 102 U. S., 426; Callan *v.* Wilson, 127 U. S., 540; Ark. Valley Land and Cattle Co. *v.* Mann., 130 U. S., 69; Whitehead *v.* Shattuck, 138 U. S., 146; Scott *v.* Neely, 140 U. S., 106; Cates *v.* Allen, 149 U. S., 451; Chappell *v.* U. S., 160 U. S., 499; Coughran *v.* Bigelow, 164 U. S., 301; Chicago, &c., R. R. Co. *v.* Chicago, 166 U. S., 226; American Pub Co. *v.* Fisher, 166 U. S., 464; Guthrie Ntl. Bank *v.* Guthrie, 173 U. S., 528.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Pervear *v.* Commonwealth, 5 Wall., 475; Manning *v.* French, 133 U. S., 186; Ellenbecker *v.* Plymouth County, 134 U. S., 31; In re Kemmler, 136 U. S., 436; McElvaine *v.* Brush, 142 U. S., 155; O'Neill *v.* Vermont, 144 U. S., 323.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Lessee of Livington *v.* Moore et al., 7 Pet., 469.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Chisholm, ex., *v.* State of Georgia, 2 Dall., 419; Hollingsworth et al., *v.* The State of Virginia, 3 Dall., 378; Martin *v.* Hunter's Lessee, 1 Wh., 304; McCulloch *v.* State of Maryland, 4 Wh., 316; Anderson *v.* Dunn, 6 Wh., 204; Cohen *v.* Virginia, 6 Wh., 264; Osborn *v.* United States Bank, 9 Wh., 738; Buehler *v.* Finley, 2 Pet., 586; Ableman *v.* Booth, 21 How., 506; The Collector *v.* Day, 11 Wall., 113; Claflin *v.* Houseman, assignee, 93 U. S., 130; Inman Steamship Company *v.* Tinker, 94 U. S., 238; Church *v.* Kelsey, 121 U. S., 282; Ouachita Packet Co. *v.* Aiken, 121 U. S. 444; W. U. Tel. Co. *v.* Pendleton, 122 U. S., 347; Bowman *v.* Chicago and Northwestern Rwy. Co., 125 U. S. 465; Mahon *v.* Justice, 127 U. S., 700; Leisy *v.* Hardin, 135 U. S., 100; Manchester *v.* Mass., 139 U. S., 240; Pollock *v.* Farmers' Loan & Trust Co., 157 U. S., 429.

ARTICLE XI.*

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

State of Georgia *v.* Brailsford et al., 2 Dall., 402; Chisholm, ex., *v.* State of Georgia, 2 Dall., 419; Hollingsworth et al. *v.* Virginia, 3 Dall., 378; Cohen *v.* Virginia, 6 Wh., 264; Osborne *v.* United States Bank, 9 Wh., 738; United States *v.* The Planters' Bank, 9 Wh., 904; The Governor of Georgia *v.* Juan Madrazo, 1 Pet., 110; Cherokee Nation *v.* State of Georgia, 5 Pet., 1; Briscoe *v.* The Bank of the Commonwealth of Kentucky, 11 Pet., 257; Curran *v.* State of Arkansas et al., 15 How., 304; New Hampshire *v.* Louisiana, 108 U. S., 766; Virginia Coupon Cases, 114 U. S., 270; Hagood *v.* Southern, 117 U. S., 52; In re Ayres, 123 U. S., 443; Lincoln County *v.* Luning, 133 U. S., 529; Coupon Cases, 135 U. S., 662; Pennoyer *v.* McConnaughty, 140 U. S., 1; In re Taylor, 149 U. S., 164; Reagan *v.* Farmers' Loan and Trust Co., 154 U. S., 362; Reagan *v.* Mercantile Trust Co., 154 U. S., 413; Scott *v.* Donald, 165 U. S., 58; Tindal *v.* Wesley, 167 U. S., 204; Smyth *v.* Ames, 169 U. S., 466; Fitts *v.* McGhee, 172 U. S. 516.

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* The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 5th of March, 1794; and was declared in a message from the President, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

ARTICLE XII.*

The Electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.†

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

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*The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

†The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December,

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Dred Scott *v.* Sanford, 19 How., 393; White *v.* Hart, 13 Wall., 646; Osborne *v.* Nicholson, 13 Wall., 654; Slaughterhouse Cases, 16 Wall., 36; Ex parte Virginia, 100 U. S., 339; Civil Rights Case, 109 U. S., 3; Plessy *v.* Ferguson, 163 U. S., 537; Robertson *v.* Baldwin, 165 U. S., 275.

ARTICLE XIV.*

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Strauder *v.* West Virginia, 100 U. S., 303; Virginia *v.* Rivers, 100 U. S., 313; Ex parte Virginia, 100 U. S., 339; Missouri *v.* Lewis, 101 U. S., 22; Civil Rights Cases, 109 U. S., 3; Louisiana *v.* New Orleans, 109 U. S.., 285; Hurtado *v.* California, 110 U. S., 516; Hagar *v.* Reclamation Dist., 111 U. S., 701; Elk *v.* Wilkins, 112 U. S., 94; Head *v.* Amoskeag Mfg. Co., 113 U. S., 9; Barbier *v.* Connolly, 113 U. S., 27; Provident Institution *v.* Jersey City, 113 U. S., 506; Soon Hing *v.* Crowley, 113 U. S., 703; Wurts *v.* Hoagland, 114 U. S., 606; Ky. R. Rd. Tax Cases, 115 U. S., 321; Campbell *v.* Holt, 115 U. S., 620; Presser *v.* Illinois, 116 U. S., 252; Stone *v.* Farmers' Loan and Trust Co., 116 U. S., 307; Arrowsmith *v.* Harmoning, 118 U. S.. 194; Yick Wo. *v.* Hopkins, 118 U. S., 356; Santa Clara Co., *v.* S. Pacific R. Rd., 118 U. S., 394; Phila. Fire Assn. *v.* N. Y., 119 U. S., 110; Schmidt *v.* Cobb, 119 U. S. 286; Baldwin *v.* Frank,

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1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

*The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislature of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1886; New Jersey, September 11, 1866 (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10,

119 U. S., 678; Hayes *v.* Missouri, 120 U. S., 68; Church *v.* Kelsey, 121 U. S., 282; Pembina Mining Co. *v.* Penna., 125 U. S.,181;Spencer *v.* Merchant, 125 U. S., 345; Dow *v.* Beidelman, 125 U. S., 680; Bank of Redemption *v.* Boston, 125 U. S., 60; Robards *v.* Lamb, 127 U. S., 58; Mo. Pac. Rwy. Co. *v.* Mackey, 127 U. S., 205; Minneapolis and St. Louis Rwy. *v.* Herrick, 127 U. S., 210; Powell *v.* Penna. 127 U. S., 678; Kidd *v.* Pearson, 128 U. S., 1; Nashville, Chattanooga, &c., Rwy. *v.* Alabama, 128 U. S., 96; Walston *v.* Navin, 128 U. S., 578; Minneapolis and St. Louis Rwy. *v.* Beckwith, 129 U. S., 26; Dent. *v.* West Va., 129 U. S., 114; Huling *v.* Kaw Valley Rwy. and Improvement Co., 130 U. S., 559; Freeland *v.* Williams, 131 U. S., 405; Cross *v.* North Carolina, 132 U. S., 131; Pennie *v.* Reis, 132 U. S., 464; Sugg *v.* Thornton, 132 U. S. 524; Davis *v.* Beason, 133 U. S., 333; Ellenbecker *v.* Plymouth Co., 134 U. S., 31; Bell Gap R. Rd. Co. *v.* Penn., 134 U. S., 232; Chicago, Milwaukee & St. Paul Rwy. *v.* Minnesota, 134 U. S., 418; Home Ins. Co. *v.* N. Y., 134 U. S., 594; Louisville & Nashville R. Rd. Co. *v.* Woodson, 134 U. S., 614; Home Ins Co. *v.* N. Y., 134 U. S., 594; Leisy *v.* Hardin, 135 U. S., 100; In re Kemmler, 136 U. S., 436; York *v.* Texas, 137 U. S., 15; Crowley *v.* Christensen, 137 U. S., 89; Wheeler *v.* Jackson, 137 U. S., 245; Holden *v.* Minnesota, 137 U. S., 483; In re Converse, 137 U. S., 624; Caldwell *v.* Texas, 137 U. S., 692; Kauffman *v.* Wootters, 138 U. S., 285; Lesl per *v.* Texas, 139 U. S., 462; In re Manning, 139 U. S., 504; Maba *v.* Louisiana, 139 U. S., 621; In re Duncan, 139 U. S., 449; In re Shibuya Jugiro, 139 U. S., 291; Lent *v.* Tillson, 140 U. S., 316; New Orleans *v.* N. O. Water W'ks, 142 U. S., 79; McElvaine *v.* Brush, 142 U. S., 155; Kaukauna Water Power Co. *v.* Miss. Canal Co., 142 U. S. 254; Charlotte, Augusta & Col. R. Rd. Co. *v.* Gibbs, 142 U. S., 386; Pacific Ex. Co. *v.* Siebert, 142 U. S., 339; Horn Silver Mining Co. *v.* N. Y., 143 U. S., 305; Budd *v.* N. Y., 143 U. S., 517; Schwab *v.* Berggren, 143 U. S., 442; Fielden *v.* Illinois, 143 U. S., 452; N. Y. *v.* Squire, 144 U. S., 175; Brown *v.* Smart, 144 U. S., 454; McPherson *v.* Blacker, 146 U. S., 1; Morley *v.* Lake Shore & Mich. Southern Ry. Co., 146 U. S., 162; Hallinger *v.* Davis, 146 U. S., 314; Yesler *v.* Washington Harbor Line Comsrs., 146 U. S., 646; Butler *v.* Goreley, 146 U. S., 303; Southern Pacific Co. *v.* Denton, 146 U. S., 202; Thorington *v.* Montgomery, 147 U. S., 490; Giozza *v.* Tiernan, 148 U. S., 657; Paulsen *v.* Portland, 149 U. S., 30; Minn. & St. L. Rwy. Co. *v.* Emmons, 149 U. S., 364; Columbus So. Rwy. Co. *v.* Wright, 151 U. S., 470; In re Frederick, 149 U. S., 70; McNulty *v.* Calif., 149 U. S., 645; Lees *v.* U. S., 150 U. S., 476; Lawton *v.* Steele, 152 U. S., 133; Montana Co. *v.* St. Louis Mining Co., 152 U. S., 160; Duncan *v.* Missouri, 152 U. S., 377; McKane *v.* Durston, 153 U. S., 684; Marchant *v.* Penna. R. R. Co, 153 U. S., 380; Brass *v.* Stoeser, 153 U. S., 391; Scott *v.* McNeal, 154 U. S., 34; Reagan *v.* Far. Loan & Trust Co., 154 U. S., 362; P., C., C. & St. L. R. R. Co., *v.* Backus, 154 U. S., 421; Interstate Com. Comsn. *v.* Brimson, 154 U. S., 447; Reagan *v.* Mercantile Trust Co., 154 U. S., 413; Pearce *v.* Texas, 155 U. S., 311; Pittsburg & So., Coal Co. *v.* La., 156 U. S., 590; Andrews *v.* Swartz, 156 U. S., 272; St. L. & S. F. Rwy. Co. *v.* Gill, 156 U. S., 649; Stevens, admr., *v.* Nichols, 157 U. S., 370; Bergemann *v.* Becker, 157 U. S., 655; Quarles *v.* Butler, 158 U. S., 532; Gray *v.* Connecticut, 159 U. S., 74; Central Land Co. *v.* Laidley, 159 U. S. 103; Moore *v.* Missouri, 159 U. S., 673; Winona & St. Peter Land Co. *v.* Minn., 159

1867; Ohio ratified it January 11, 1867 (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it); Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 20, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana July 9, 1868, and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified it October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterwards ratified by either State.

U. S., 528; Iowa Cent. Ry. Co. *v.* Iowa, 160 U. S., 389; Eldridge *v.* Trezevant, 160 U. S. 452; Laing *v.* Rigney, 160 U. S., 531; Gibson *v.* Miss., 162 U. S., 565; Western Union Telegraph Co., *v.* Taggart, 163 U. S., 1; Lowe *v.* Kansas, 163 U. S., 81; Plessey *v.* Ferguson, 163 U. S., 537; Talton *v.* Mayes, 163 U. S., 376; Fallbrook Irrigation District *v.* Bradley, 164 U. S., 112; Mo. Pac. Ry. Co. *v.* Nebraska, 164 U. S., 403; Covington &c. Turnpike Co. *v.* Sandford, 164 U. S., 578; St. Louis &c Ry. Co. *v.* Mathews, 165 U. S., 1; Gulf &c Ry. Co. *v.* Ellis, 165 U. S., 150; Jones *v.* Brimm, 165 U. S., 180; Adams Ex. Co. *v.* Ohio, 165 U. S., 194; Western Union Tel. Co. *v.* Indiana, 165 U. S., 304; Allgeyer *v.* Louisiana, 165 U. S., 578; Allen *v.* Georgia, 166 U. S., 138; Chicago &c R. R. Co. *v.* Chicago, 166 U. S., 226; Gladson *v.* Minn., 166 U. S., 427; Sentell *v.* New Orleans &c. R. R. Co., 166 U. S., 698; Davis *v.* Mass., 167 U. S., 43; Turner *v.* New York, 168 U. S., 90; Hodgson *v.* Vermont, 168 U. S., 262; Nobles *v.* Georgia, 168 U. S., 398; McHenry *v.* Alford, 168 U. S., 651; Holden *v.* Hardy, 169 U. S., 366; Savings & Loan Society *v.* Multnomah County, 169 U. S., 421; Smyth *v.* Ames, 169 U. S., 466; Wilson *v.* North Carolina, 169 U. S., 586; U. S., *v.* Wong Kim Ark. 169 U. S., 649; Williams *v.* Miss., 170 U. S., 213; Galveston &c. Ry. Co. *v.* Texas, 170 U. S., 226; Magoun *v.* Ill. Trust & Savings Bank, 170 U. S., 283; Williams *v.* Eggleston, 170 U. S., 304; Tinsley *v.* Anderson, 171 U. S., 101; King *v.* Mullins, 171 U. S., 404; New York *v.* Roberts, 171 U. S., 658; Meyer *v.* Richmond, 172 U. S., 82; Blake *v.* McClung, 172 U. S., 239; Orient Ins. Co. *v.* Daggs, 172 U. S., 557 Wilson *v.* Eureka City, 173 U. S., 32; Central Loan & Trust Co. *v.* Campbell Commission Co., 173 U. S., 84; Dewey *v.* Des Moines, 173 U. S., 193; St. Louis &c Ry. Co. *v.* Paul, 173 U. S., 404; Henderson Bridge Co. *v.* Henderson City, 173 U. S., 592; Lake Shore &c. Ry. Co. *v.* Smith, 173 U. S., 684; Atchison &c. R. R. Co. *v.* Matthews, 174 U. S., 96; Brown *v.* N. J., 175 U. S., 172; Tullis *v.* Lake Erie &c. R. R. Co., 175 U. S., 348; Cumming *v.* Richmond County Board of Education, 175 U. S., 528; Bollon *v.* Nebraska, 176 U. S., 83; Clark *v.* Kansas City, 176 U. S., 114; Roller *v.* Holly, 176 U. S., 398; Weyerhaueser *v.* Minn., 176 U. S., 550; Maxwell *v.* Dow, 176 U. S., 581; Gundling *v.* Chicago, 177 U. S., 183; Ohio Oil Co. *v.* Indiana, 177 U. S., 190; Louisville &c. R. R. Co. *v.* Schmidt, 177 U. S., 230; Saranac Land & Timber Co. *v.* Comptroller of N. Y., 177 U. S., 318; Carter *v.* Texas, 177 U. S., 442; L'Hote *v.* New Orleans, 177 U. S., 587; Sully *v.* Am. Ntl. Bank, 178 U. S., 289; Wheeler *v.* New York &c. R. R. Co., 178 U. S., 321; Taylor *v.* Beckham, 178 U. S., 548; Am. Sugar Refining Co. *v.* Louisiana, 179 U. S., 89; Williams *v.* Fears, 179 U. S., 270; New York *v.* Barker, 179 U. S., 279; Wisconsin &c. R. R. Co. *v.* Jacobson, 179 U. S., 287; Mason *v.* Missouri, 179 U. S., 328.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United

States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Crandall *v.* The State of Nevada, 6 Wall., 35; Paul *v.* Virginia, 8 Wall., 168; Ward *v.* Maryland, 12 Wall., 418; Slaughterhouse Cases, 16 Wall., 36; Bradwell *v.* The State, 16 Wall., 130; Bartemeyer *v.* Iowa, 18 Wall., 129; Minor *v.* Happersett, 21 Wall., 162; Walker *v.* Sauvinet, 92 U. S., 90; Kennard *v.* Louisiana, ex rel. Morgan, 92 U. S., 480; United States *v.* Cruishank, 92 U. S., 542; Munn *v.* Illinois, 94 U. S., 113.

ARTICLE XV.*

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

United States *v.* Reese et al., 92 U. S., 214; United States *v.* Cruikshank et al., 92 U. S., 542; Ex parte Yarborough, 110 U. S., 651; McPherson *v.* Blacker, 146 U. S., 1.

RATIFICATIONS OF THE CONSTITUTION.

The Constitution was adopted by a convention of the States September 17, 1787, and was subsequently ratified by the several States, in the following order, viz:

Delaware, December 7, 1787.
Pennsylvania, December 12, 1787.
New Jersey, December 18, 1787.
Georgia, January 2, 1788.
Connecticut, January 9, 1788.
Massachusetts, February 6, 1788.
Maryland, April 28, 1788.

* The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in order of their reception at the Department of State) were: From North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9-12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michi-

South Carolina, May 23, 1788.
New Hampshire, June 21, 1788.
Virginia, June 26, 1788.
New York, July 26, 1788.
North Carolina, November 21, 1789.
Rhode Island, May 29, 1790.

The State of Vermont, by convention, ratified the Constitution on the 10th of January, 1791, and was, by an act of Congress of the 13th of February, 1791, "received and admitted into this Union as a new and entire member of the United States of America."

RATIFICATION OF THE AMENDMENTS TO THE CONSTITUTION.

The first ten of the preceding articles of amendment (with two others which were not ratified by the requisite number of States) were submitted to the several State legislatures by a resolution of Congress, which passed on the 25th of September, 1789, at the first session of the First Congress, and were ratified by the legislatures of the following States:

New Jersey, November 20, 1789.
Maryland, December 19, 1789.
North Carolina, December 22, 1789.
South Carolina, January 19, 1790.
New Hampshire, January 25, 1790.
Delaware, January 28, 1790.
Pennsylvania, March 10, 1790.
New York, March 27, 1790.
Rhode Island, June 15, 1790.
Vermont, Novemebr 3, 1791.
Virginia, December 15, 1791.

The acts of the legislatures of the States ratifying these amendments were transmitted by the governors to the President, and by him communicated to Congress. The legislatures of Massachusetts, Connecticut, and Georgia do not appear by the record to have ratified them.

The eleventh article was submitted to the legislatures of the several States by a resolution of Congress passed on the 5th of March, 1794, at the first session of the Third Congress; and on the 8th of January, 1798,

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gan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13-14, 1869; New York, March 17, April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it); New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15-17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

at the second session of the Fifth Congress, it was declared by the President, in a message to the two Houses of Congress, to have been adopted by the legislatures of three-fourths of the States, there being at that time sixteen States in the Union.

The twelfth article was submitted to the legislatures of the several States, there being then seventeen States, by a resolution of Congress passed on the 12th of December, 1803, at the first session of the Eighth Congress, and was ratified by the legislatures of three-fourths of the States in 1804, according to a proclamation of the Secretary of State dated the 25th of September, 1804.

The thirteenth article was submitted to the legislatures of the several States, there being then thirty-six States, by a resolution of Congress passed on the 1st of February, 1865, at the second session of the Thirty-eighth Congress, and was ratified, according to a proclamation of the Secretary of State dated December 18, 1865, by the legislatures of the following States:

Illinois, February 1, 1865.
Rhode Island, February 2, 1865.
Michigan, February 2, 1865.
Maryland, February 3, 1865.
New York, February 3, 1865.
West Virginia, February 3, 1865.
Maine, February 7, 1865.
Kansas, February 7, 1865.
Massachusetts, February 8, 1865.
Pennsylvania, February 8, 1865.
Virginia, February 9, 1865.
Ohio, February 10, 1865.
Missouri, February 10, 1865.
Indiana, February 16, 1865.
Nevada, February 16, 1865.
Louisiana, February 17, 1865.
Minnesota, February 23, 1865.
Wisconsin, March 1, 1865.
Vermont, March 9, 1865.
Tennessee, April 7, 1865.
Arkansas, April 20, 1865.
Connecticut, May 5, 1865.
New Hampshire, July 1, 1865.
South Carolina, November 13, 1865.
Alabama, December 2, 1865.
North Carolina, December 4, 1865.
Georgia, December 9, 1865.

The following States not enumerated in the proclamation of the Secretary of State also ratified this amendment:

Oregon, December 11, 1865.
California, December 20, 1865.

Florida, December 28, 1865.
New Jersey, January 23, 1866.
Iowa, January 24, 1866.
Texas, February 18, 1870.

The fourteenth article was submitted to the legislatures of the several States, there being then thirty-seven States, by a resolution of Congress passed on the 16th of June, 1866, at the first session of the Thirty-ninth Congress, and was ratified, according to a proclamation of the Secretary of State dated July 28, 1868, by the legislatures of the following States:

Connecticut, June 30, 1866.
New Hampshire, July 7, 1866.
Tennessee, July 19, 1866.
*New Jersey, September 11, 1866.
†Oregon, September 19, 1866.
Vermont, November 9, 1866.
New York, January 10, 1867.
‡Ohio, January 11, 1867.
Illinois, January 15, 1867.
West Virginia, January 16, 1867.
Kansas, January 18, 1867.
Maine, January 19, 1867.
Nevada, January 22, 1867.
Missouri, January 26, 1867.
Indiana, January 29, 1867.
Minnesota, February 1, 1867.
Rhode Island, February 7, 1867.
Wisconsin, February 13, 1867.
Pennsylvania, February 13, 1867.
Michigan, February 15, 1867.
Massachusetts, March 20, 1867.
Nebraska, June 15, 1867.
Iowa, April 3, 1868.
Arkansas, April 6, 1868.
Florida, June 9, 1868.
**North Carolina, July 4, 1868.
Louisiana, July 9, 1868.
**South Carolina, July 9, 1868.
Alabama, July 13, 1868.
**Georgia, July 21, 1868.

**The State of Virginia ratified this amendment on the 8th of October, 1869, subsequent to the date of the proclamation of the Secretary of State.

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*New Jersey withdrew her consent to the ratification in April, 1868.

†Oregon withdrew her consent to the ratification October 15, 1868.

‡Ohio withdrew her consent to the ratification in January, 1868.

**North Carolina, South Carolina, Georgia, and Virginia had previously rejected the amendment.

The States of Delaware, Maryland, Kentucky, and Texas rejected the amendment.

The fifteenth article was submitted to the legislatures of the several States, there being then thirty-seven States, by a resolution of Congress pass on the 27th of February, 1869, at the first session of the Forty-first Congress; and was ratified, according to a proclamation of the Secretary of State dated March 30, 1870, by the legislatures of the folowing States:

Nevada, March 1, 1869.
West Virginia, March 3, 1869.
North Carolina, March 5, 1869..
Louisiana, March 5, 1869.
Illinois, March 5, 1869.
Michigan, March 8, 1869.
Wisconsin, March 9, 1869.
Massachusetts, March 12, 1869.
Maine, March 12, 1869.
South Carolina, March 16, 1869.
Pennsylvania, March 26, 1869.
Arkansas, March 30, 1869.
*New York, April 14, 1869.
Indiana, May 14, 1869.
Connecticut, May 19, 1869.
Florida, June 15, 1869..
New Hampshire, July 7, 1869.
Virginia, October 8, 1869.
Vermont, October 8, 1869.
Alabama, November 24, 1869.
Missouri, January 10, 1870.
Mississippi, January 17, 1870.
Rhode Island, January 18, 1870.
Kansas, January 19, 1870.
†Ohio, January 27, 1870.
Georgia, February 2, 1370.
Iowa, February 3, 1870.
Nebraska, February 17, 1870.
Texas, February 18, 1870.
Minnesota, February 19, 1870.

‡The State of New Jersey ratified this amendment on the 21st of February, 1871, subsequent to the date of the proclamation of the Secretary of State.

The States of California, Delaware, Kentucky, Maryland, Oregon, and Tennessee rejected this amendment.

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* New York withdrew her consent to the ratification January 5, 1870.
† Ohio had previously rejected the amendment May 4, 1869.
‡ New Jersey had previously rejected the amendment.

Index to the Constitution of the United States and Amendments Thereto,

A.

	Art.	Sec.	Cl.
Abridged. The privileges or immunities of citizens of the United States shall not be. [Amendments]	14	1	—
Absent members, in such manner and under such penalties as it may provide. Each House is authorized to compel the attendance of	1	5	1
Accounts of receipts and expenditures of public money shall be published from time to time. A statement of the	1	9	7
Accusation. In all criminal prosecutions the accused shall be informed of the cause and nature of the. [Amendments]	6	—	—
Accused shall have a speedy public trial. In all criminal prosecutions the. [Amendments]	6	—	—
He shall be tried by an impartial jury of the State and district where the crime was committed. [Amendments]	6	—	—
He shall be informed of the nature of the accusation. [Amendments]	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	—	—
He shall have the assistance of counsel for his defense. [Amendments].	6	—	—
Actions at common law involving over twenty dollars shall be tried by jury. [Amendments]	7	—	—
Acts, records, and judicial proceedings of another State. Full faith and credit shall be given in each State to the	4	1	—
Acts. Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Adjourn from day to day. A smaller number than a quorum of each House may	1	5	1
Adjourn for more than three days, nor to any other place than that in which they shall be sitting. Neither House shall, during the session of Congress, without the consent of the other	1	5	4
Adjournment, the President may adjourn them to such time as he shall think proper. In case of disagreement between the two Houses as to	2	3	—
Admiralty and maritime jurisdiction. The judicial power shall extend to all cases of	3	2	1
Admitted by the Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other States. New States may be	4	3	1
Nor shall any State be formed by the junction of two or more States, without the consent of the legislatures and of Congress	4	3	1
Adoption of the Constitution shall be valid. All debts and engagements contracted by the Confederation and before the	6	—	1
Advice and consent of the Senate. The President shall have power to make treaties by and with the	2	2	2
To appoint ambassadors or other public ministers and consuls by and with the	2	2	2
To appoint all other officers of the United States not herein otherwise provided for by and with the	2	2	2
Affirmation. Senators sitting to try impeachments shall be on oath or	1	3	6
To be taken by the President of the United States. Form of the oath or	2	1	7

	Art.	Sec.	Cl.
Affirmation, cont.			
No warrants shall be issued but upon probable cause and on oath or [Amendments]	4	—	—
To support the Constitution. Senators and Representatives, members of State legislatures, executive and judicial officers, both State and Federal, shall be bound by oath or	6	—	3
Age. No person shall be a Representative who shall not have attained twenty-five years of	1	2	2
No person shall be a Senator who shall not have attained thirty years of	1	3	3
Agreement or compact with another State without the consent of Congress. No State shall enter into any	1	10	3
Aid and comfort.. Treason against the United States shall consist in levying war against them, adhering to their enemies, and giving them	3	3	1
Alliance or confederation. No State shall enter into any treaty of	1	10	1
Ambassadors, or public ministers and consuls. The President may appoint	2	2	2
The judicial power of the United States shall extend to all cases affecting	2	2	1
Amendments to the Constitution. Whenever two-thirds of both Houses shall deem it necessary, Congress shall propose	5	—	—
On application of the legislatures of two-thirds of the States, Congress shall call a convention to propose	5	—	—
Shall be valid when ratified by the legislatures of or by conventions in, three-fourths of the States	5	—	—
Answer for a capital or infamous crime unless on presentment of a grand jury. No person shall be held to. [Amendments]	5	—	—
Except in cases in the land or naval forces, or in the militia when in actual service. [Amendments]	5	—	—
Appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as Congress shall make. In what cases the Supreme Court shall have	3	2	2
Application of the legislature or the executive of a State. The United States shall protect each State against invasion and domestic violence on the	4	4	—
Application of the legislatures of two-thirds of the States, Congerss shall call a convention for proposing amendments to the Constitution. On the	5	—	—
Appointment of officers and authority to train the militia reserved to the States respectively	1	8	16
Of such inferior officers as they may think proper in the President alone. Congress may by law vest the	2	2	2
Appointments in the courts of law or in the heads of Departments. Congress may by law vest the	2	2	2
Apportionment of representation and direct taxation among the several States. Provisions relating to the [Repealed by section 2 of fourteenth amendment.]	1	2	3
Of Representatives among the several States. Provisions relating to the. [Amendments]	14	2	—
Appropriate legislation. Congress shall have power to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof	1	8	18
Congress shall have power to enforce the thirteenth article, prohibiting slavery, by. [Amendments]	13	2	—
Congress shall have power to enforce the provisions of the fourteenth article by. [Amendments]	14	5	—
Congress shall have power to enforce the provisions of the fifteenth article by. [Amendments]	15	2	—
Appropriation of money for raising and supporting armies shall be for a longer term than two years. But no	1	8	12
Appropriations made by law. No money shall be drawn from the Treasury but in consequence of	1	9	7

	Art.	Sec.	Cl.
Congress, cont.			
To make rules for the government of the Army and Navy	1	8	14
To call out the militia to execute the laws, suppress insurrections, and repel invasions	1	8	15
To provide for organizing, arming, and equipping the militia	1	8	16
To exercise exclusive legislation over the District fixed for the seat of government, and over forts, magazines, arsenals, and dockyards	1	8	17
To make all laws necessary and proper to carry into execution all powers vested by the Constitution in the Government of the United States	1	8	18
No person holding any office under the United States shall accept of any present, emolument, office, or title of any kind from any foreign State, without the consent of	1	9	8
May determine the time of choosing the electors for President and Vice-President and the day on which they shall give their votes	2	1	3
The President may, on extraordinary occasions, convene either House of	2	3	—
The manner in which the acts, records, and judicial proceedings of the States shall be proved, shall be prescribed by	4	1	—
New States may be admitted by Congress into this Union	4	3	2
Shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States	4	3	1
Amendments to the Constitution shall be proposed whenever it shall be deemed necessary by two-thirds of both Houses of	5	—	—
Persons engaged in insurrection or rebellion against the United States disqualified for Senators or Representatives in. [Amendments]	14	3	—
But such disqualifications may be removed by a vote of two-thirds of both Houses of. [Amendments]	14	3	—
Shall have power to enforce, by appropriate legislation, the thirteenth amendment. [Amendments]	13	2	—
Shall have power to enforce, by appropriate legislation, the fourteenth amendment. [Amendments]	14	5	—
Shall have power to enforce, by appropriate legislation, the fifteenth amendment. [Amendments]	15	2	—
Consent. No State shall be deprived of its equal suffrage in the Senate without its	5	—	—
Consent of Congress. No person holding any office of profit or trust under the United States shall accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign potentate, without the	1	9	9
No State shall lay any imposts or duties on imports, except what may be absolutely necessary for executing its inspection laws, without the	1	10	2
No State shall lay any duty of tonnage, keep troops or ships of war in time of peace, without the	1	10	3
No State shall enter into any agreement or compact with another State, or with a foreign power, without the	1	10	3
No State shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay, without the	1	10	3
No new State shall be formed or erected within the jurisdiction of any other State, or any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures thereof, as well as the	4	3	1
Consent of the legislature of the State in which the same may be. Congress shall exercise exclusive authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings with the	1	8	17
Consent of the legislatures of the States and of Congress. No State shall be formed by the junction of two or more States or parts of States without the	4	3	1

	Art.	Sec.	Cl.
Consent of the other. Neither House, during the session of Congress, shall adjourn for more than three days, nor to any other place than that in which they shall be sitting, without the	1	5	4
Consent of the owner. No soldier shall be quartered in time of peace in any house without the. [Amendments]	3	—	—
Consent of the Senate. The President shall have power to make treaties, by and with the advice and	2	2	2
The President shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers created by law and not otherwise herein provided for, by and with the advice and	2	2	2
Constitution, in the Government of the United States, or in any department or officer thereof. Congress shall have power to pass all laws necessary to the execution of the powers vested by the	1	8	18
Constitution, shall be eligible to the office of President. No person, except a natural-born citizen, or a citizen at the time of the adoption of the	2	1	4
Constitution. The President, before he enters upon the execution of his office, shall take an oath to preserve, protect, and defend the	2	1	7
Constitution, laws, and treaties of the United States. The judicial power shall extend to all cases arising under the	3	2	1
Constitution shall be so construed as to prejudice any claims of the United States, or of any State (in respect to territory or other property of the United States). Nothing in the	4	3	2
Constitution. The manner in which amendments to, may be proposed and ratified	5	—	—
Constitution shall be as valid under it as under the Confederation. All debts and engagements contracted before the adoption of the	6	—	1
Constitution and the laws made in pursuance thereof, and all treaties made, or which shall be made, by the United States, shall be the supreme law of the land. The	6	—	2
The judges in every State, anything in the constitution or laws of a State to the contrary notwithstanding, shall be bound thereby	6	—	2
Constitution. All officers, legislative, executive and judicial, of the United States, and of the several States, shall be bound by an oath to support the	6	—	3
But no religious test shall ever be required as a qualification for any office or public trust	6	—	3
Constitution, between the States so ratifying the same. The ratification of the conventions of nine States shall be sufficient for the establshment of the	7	—	—
Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The enumeration in the. [Amendments]	9	—	—
Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people. Powers not delegated to the United States by the. [Amendments]	10	—	—
Constitution, and then engaged in rebellion against the United States. Disqualification for office imposed upon certain classes of persons who took an oath to support the. [Amendments]	14	3	—
Constitution. Done in convention by the unanimous consent of the States present, September 17, 1787	—	—	—
Contracts. No State shall pass any *ex post facto* law, or law impairing the obligation of	1	10	1

	Art.	Sec.	Cl.
Controversies to which the United States shall be a party; between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; between a State or its citizens and foreign States, citizens, or subjects. The judicial power shall extend to	3	2	1
Convene Congress or either House, on extraordinary occasions. The President may	2	3	—
Convention for proposing amendments to the Constitution. Congress, on the application of two-thirds of the legislatures of the States, may call a	5	—	—
Convention, by the unanimous consent of the States present on the 17th of September, 1787. Adoption of the Constitution in	7	—	—
Conventions of nine States shall be sufficient for the establishment of the Constitution. The ratification of the	7	—	—
Conviction in cases of impeachment shall not be had without the concurrence of two-thirds of the members present	1	3	6
Copyrights to authors for limited times. Congress shall have power to provide for	1	8	8
Corruption of blood. Attainder of treason shall not work	3	3	2
Counsel for his defense. In all criminal prosecutions the accused shall have the assistance of. [Amendments]	6	—	—
Counterfeiting the securities and current coin of the United States. Congress shall provide for the punishment of	1	8	6
Courts. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
Courts of law. Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the heads of Departments, or in the	2	2	2
Courts as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such inferior	3	1	—
Courts. The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
Credit. No State shall emit bills of	1	10	1
Credit of the United States. Congress shall have power to borrow money on the	1	8	2
Credit shall be given in every other State to the public acts, records, and judicial proceedings of each State. Full faith and	4	1	—
Crime, unless on a presentment of a grand jury. No person shall be held to answer for a capital or otherwise infamous. [Amendments]	5	—	—
Except in cases in the military and naval forces, or in the militia, when in actual service. [Amendments]	5	—	—
Crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—
Crimes, except in cases of impeachment, shall be tried by jury. All	3	2	3
They shall be tried in the State within which they may be committed	3	2	3
When not committed in a State, they shall be tried at the places which Congress may by law have provided	3	2	3
Criminal prosecutions, the accused shall have a speedy and public trial by jury in the State and district where the crime was committed. In all. [Amendments]	6	—	—
He shall be informed of the nature and cause of the accusation. [Amendments	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—

	Art.	Sec.	Cl.
Criminal prosecutions, cont.			
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	—	—
He shall have the assistance of counsel in his defense. [Amendments]	6	—	—
Criminate himself. No person as a witness shall be compelled to. [Amendments]	5	—	—
Cruel and unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor. [Amendments]	8	—	—
D.			
Danger as will not admit of delay. No State shall without the consent of Congress engage in war, unless actually invaded or in such imminent.	1	10	3
Day on which they shall vote for President and Vice-President, which shall be the same throughout the United States. Congress may determine the time of choosing the electors and the	2	1	3
Day to day, and may be authorized to compel the attendance of absent members. A smaller number than a quorum of each House may adjourn from	1	5	1
Death, resignation, or inability of the President, the powers and duties of his office shall devolve on the Vice-President. In case of the	2	1	5
Death, resignation, or inability of the President. Congress may provide by law for the case of the removal or	2	1	5
Debt of the United States, including debts for pensions and bounties incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the public. [Amendments]	14	4	—
Debts. No State shall make anything but gold and silver coin a tender in payment of	1	10	1
Debts and provide for the common defense and general welfare of the United States. Congress shall have power to pay the	1	8	1
Debts and engagements contracted before the adoption of this Constitution shall be as valid against the United States under it as under the Confederation	6	—	1
Debts or obligations incurred in aid of insurrection or rebellion against the United States, or claims for the loss or emancipation of any slave. Neither the United States nor any State shall assume or pay any. [Amendments]	14	4	—
Declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to	1	8	11
Defense, promote the general welfare, etc. To insure the common. [Preamble]	—	—	—
Defense and general welfare throughout the United States. Congress shall have power to pay the debts and provide for the common	1	8	1
Defense. In all criminal prosecutions the accused shall have the assistance of counsel for his. [Amendments]	6	—	—
Delaware entitled to one Representative in the First Congress	1	2	3
Delay. No State shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of	1	10	3
Delegated to the United States or to the people. The powers not. [Amendments]	10	—	—
Deny or disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to. [Amendments]	9	—	—
Departments upon any subject relating to their duties. The President may require the written opinion of the principal officers in each of the Executive	2	2	1
Departments. Congress may by law vest the appointment of inferior officers in the heads of	2	2	2

	Art.	Sec.	Cl.
Direct tax shall be laid unless in proportion to the census or enumeration. No capitation or other	1	9	4
Direct taxes and Representatives, how apportioned among the several States. [Repealed by the second section of the fourteenth amendment	1	2	3
Disability of the President and Vice-President. Provisions in case of the..	2	1	5
Disability. No person shall be a Senator or Representative in Congress, or Presidential elector, or hold any office, civil or military, under the United States, or any State, who having previously taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, to support the Constitution, afterwards engaged in insurrection or rebellion against the United States. [Amendments].....	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such. [Amendments]	14	3	—
Disagreement between the two Houses as to the time of adjournment, the President may adjourn them to such time as he may think proper. In case of	2	3	—
Disorderly behavior. Each House may punish its members for.....	1	5	2
Disorderly behavior. And with the concurrence of two-thirds expel a member for	1	5	2
Disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or. [Amendments]	9	—	—
Disqualification. No Senator or Representative shall, during the time for which he was elected, be appointed to any office under the United States which shall have been created or its emoluments increased during such term	1	6	2
No person holding any office under the United States shall be a member of either House during his continuance in office	1	6	2
No person shall be a member of either House, Presidential elector, or hold any office under the United States, or any State, who, having previously sworn to support the Constitution, afterwards engaged in insurrection or rebellion. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	—
District of Columbia. Congress shall exercise exclusive legislation in all cases over the	1	8	17
Dockyards. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17
Domestic tranquillity, provide for the common defense, etc. To insure [Preamble]	—	—	—
Domestic violence. The United States shall protect each State against invasion and	4	4	—
Due process of law. No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property without. [Amendments]	5	—	—
No State shall deprive any person of life, liberty, or property without. [Amendments]	14	1	—
Duties and powers of the office of President, in case of his death, removal, or inability to act, shall devolve on the Vice-President	2	1	5
In case of the disability of the President and Vice-President, Congress shall declare what officer shall act	2	1	5
Duties, imposts, and excises. Congress shall have power to lay and collect taxes	1	8	1
Shall be uniform throughout the United States	1	8	1
Duties shall be laid on articles exported from any State. No tax or.....	1	9	5

	Art.	Sec.	Cl.
Duties in another State. Vessels clearing in the ports of one State shall not be obliged to pay	1	9	6
On imports and exports, without the consent of Congress, except where necessary for executing its inspection laws. No State shall lay any..	1	10	2
Duties on imports or exports. The net produce of all such duties shall be for the use of the Treasury of the United States	1	10	2
All laws laying such duties shall be subject to the revision and control of Congress	1	10	2
Duty of tonnage without the consent of Congress. No State shall lay any..	1	10	3

E.

Election of President and Vice-President. Congress may determine the day for the	2	1	3
Shall be the same throughout the United States. The day of the.....	2	1	3
Elections for Senators and Representatives. The legislatures of the States shall prescribe the times, places, and manner of holding	1	4	1
But Congress may, at any time, alter such regulations, except as to the places of choosing Senators	1	4	1
Elections for Senators and Representatives. Returns and qualifications of its own members. Each House shall be judge of the	1	5	1
Electors for members of the House of Representatives. Qualifications of	1	2	1
Electors for President and Vice-President. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress	2	1	2
But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.	2	1	2
Electors. Congress may determine the time of choosing the electors and the day on which they shall give their votes	2	1	3
Which day shall be the same throughout the United States	2	1	3
The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—
Electors shall name, in their ballots, the person voted for as President; and in distinct ballots the person voted for as Vice-President. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as President and of persons voted for as Vice-President, which they shall sign and certify, and transmit sealed to the seat of government, directed to the President of the Senate. [Amendments]	12	—	—
No person having taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterwards engaged in insurrection or rebellion against the United States, shall be an elector	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	—
Emancipation of any slave shall be held to be illegal and void. Claims for the loss or. [Amendments]	14	4	—
Emit bills of credit. No State shall	1	10	1
Emolument of any kind from any king, prince, or foreign State without the consent of Congress. No person holding any office under the United States shall accept any	*1	9	8
Enemies. Treason shall consist in levying war against the United States, in adhering to, or giving aid and comfort to their	3	3	1
Engagements contracted before the adoption of this Constitution shall be valid. All debts and	6	—	1

	Art.	Sec.	Cl.
Enumeration of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter	1	2	3
Ratio of representation not to exceed one for every 30,000 until the first enumeration shall be made	1	2	3
Enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The. [Amendments]	9	—	—
Equal protection of the laws. No State shall deny to any person within its jurisdiction the. [Amendments]	14	1	—
Equal suffrage in the Senate. No State shall be deprived without its consent of its	5	—	—
Establishment of this Constitution between the States ratifying the same. The ratification of nine States shall be sufficient for the	7	—	—
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Amendments]	8	—	—
Excises. Congress shall have power to lay and collect taxes, duties, imposts, and	1	8	1
Shall be uniform throughout the United States. All duties, imposts, and	1	8	1
Exclusive legislation, in all cases, over such district as may become the seat of government. Congress shall exercise	1	8	17
Exclusive legislation over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise	1	8	17
Executive of a State. The United States shall protect each State against invasion and domestic violence on the application of the legislature or the	4	4	—
Executive and judicial officers of the United States and of the several States shall be bound by an oath to support the Constitution	6	—	3
Executive Departments. On subjects relating to their duties the President may require the written opinion of the principal officers in each of the	2	2	1
Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
Executive power shall be vested in a President of the United States of America. The	2	1	1
Expel a member. Each House, with the concurrence of two-thirds, may	1	5	2
Expenditures of public money shall be published from time to time. A regular statement of the receipts and	1	9	7
Exportations from any State. No tax or duty shall be laid on	1	9	5
Exports or imports, except upon certain conditions. No State shall, without the consent of Congress, lay any duties on	1	10	2
Laid by any State shall be for the use of the Treasury. The net produce of all duties on	1	10	2
Shall be subject to the revision and control of Congress. All laws of the States laying duties on	1	10	2
Ex post facto law shall be passed. No bill of attainder or	1	9	3
Ex post facto law, or law impairing the obligation of contracts. No State shall pass any bill of attainder	1	10	1
Extraordinary occasions. The President may convene both Houses or either of them on	2	3	—

F.

Faith and credit in each State shall be given to the acts, records, and judicial proceedings of another State. Full	4	1	—
Felony, and breach of the peace. Members of Congress shall not be privileged from arrest for treason,	1	6	1
Felonies committed on the high seas. Congress shall have power to define and punish piracies and	1	8	10
Fines. Excessive fines shall not be imposed. [Amendments]	8	—	—

	Art.	Sec.	Cl.
Foreign coin. Congress shall have power to coin money, fix the standard of weights and measures, and to regulate the value of	1	8	5
Foreign nations among the States and with the Indian tribes. Congress shall have power to regulate commerce with	1	8	3
Foreign power. No State shall, without the consent of Congress, enter into any compact or agreement with any	1	10	3
Forfeiture except during the life of the person attainted. Attainder of treason shall not work	3	3	2
Formation of new States. Provisions relating to the	4	3	1
Form of government. The United States shall guarantee to every State in this Union a republican	4	4	—
And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature can not be convened) against domestic violence	4	4	—
Forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise exclusive authority over all places purchased for the erection of	1	8	17
Freedom of speech or the press. Congress shall make no law abridging the. [Amendments]	1	—	—
Free State, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a. [Amendments]	2	—	—
Fugitives from crime found in another State shall, on demand, be delivered up to the authorities of the State from which they may flee	4	2	2
Fugitives from service or labor in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due	4	2	3

G.

General welfare and secure the blessings of liberty, etc. To promote the. [Preamble]	—	—	—
General welfare. Congress shall have power to provide for the common defense and	1	8	1
Georgia shall be entitled to three Representatives in the First Congress	1	2	3
Gold and silver coin a tender in payment of debts. No State shall make anything but	1	10	1
Good behavior. The judges of the Supreme and inferior courts shall hold their offices during	3	1	—
Government. The United States shall guarantee to every State in this Union a republican form of	4	4	—
And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature can not be convened) against domestic violence	4	4	—
Grand jury. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment of a. [Amendments]	5	—	—
Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments]	5	—	—
Guarantee to every State in this Union a republican form of government. The United States shall	4	4	—
Guarantee. And shall protect each of them against invasion, and on application of the legislature or of the executive (when the legislature cannot be convened) against domestic violence	4	4	—

H.

Habeas corpus shall not be suspended unless in cases of rebellion of invasion. The writ of	1	9	2

	Art.	Sec.	Cl.
Heads of Departments. Congress may by law vest the appointment of inferior officers in the	2	2	2
On any subject relating to their duties, the President may require the written opinion of the principal officers in each of the Executive Departments	2	2	1
High crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—
House of Representatives. Congress shall consist of a Senate and	1	1	—
Shall be composed of members chosen every second year	1	2	1
Qualifications of electors for members of the	1	2	1
No person shall be a member who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States	1	2	2
The executives of the several States shall issue writs of election to fill vacancies in the	1	2	4
Shall choose their Speaker and other officers	1	2	5
Shall have the sole power of impeachment	1	2	5
Shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority shall constitute a quorum to do business	1	5	1
Less than a majority may adjourn from day to day, and compel the attendance of absent members	1	5	1
May determine its own rules of proceedings	1	5	2
May punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	1	5	2
Shall keep a journal of its proceedings	1	5	3
Shall not adjourn for more than three days during the session of Congress without the consent of the Senate	1	5	4
For any speech or debate in either House, members shall not be questioned in any other place	1	6	1
No person holding any office under the United States shall, while holding such office, be a member of the	1	6	2
No member shall, during the time for which he was elected, be appointed to an office which shall have been created or the emoluments increased during his membership	1	6	2
All bills for raising revenue shall originate in the	1	7	1
The votes for President and Vice-President shall be counted in the presence of the Senate and. [Amendments]	12	—	—
If no person have a majority of electoral votes, then from the three highest on the list the House of Representatives shall immediately, by ballot, choose a President. [Amendments]	12	—	—
They shall vote by States, each State counting one vote. [Amendments]	12	—	—
A quorum shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to the choice of a President. [Amendments]	12	—	—
No person having as a legislative, executive, or judicial officer of the United States, or of any State, taken an oath to support the Constitution, and afterwards engaged in insurrection or rebellion against the United States, shall be a member of the. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	—
I.			
Imminent danger as will not admit of delay. No State shall, without the consent of Congress, engage in war, unless actually invaded or in such	1	10	3

	Art.	Sec.	Cl.
Immunities. Members of Congress shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same	1	6	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—
Immunities. No person shall be twice put in jeopardy of life or limb for the same offense. [Amendments]	5	—	—
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—
Nor shall any States deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments]	14	1	—
Impeachment. The President may grant reprieves and pardons except in cases of	2	2	1
The House of Representatives shall have the sole power of	1	2	5
The trial of all crimes shall be by jury, except in cases of	3	2	3
Impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed upon	2	4	—
Impeachments. The Senate shall have sole power to try all	1	3	6
The Senate shall be on oath or affirmation, when sitting for the trial of	1	3	6
When the President of the United States is tried the Chief Justice shall preside	1	3	6
No person shall be convicted without the concurrence of two-thirds of the members present	1	3	6
Judgment shall not extend beyond removal from office and disqualification to hold office	1	3	7
But the party convicted shall be liable to indictment and punishment according to law	1	3	7
Importation of slaves prior to 1808 shall not be prohibited by the Congress	1	9	1
But a tax or duty of ten dollars for each person may be imposed on such	1	9	1
Imports or exports except what may be absolutely necessary for executing its inspection laws. No State shall, without the consent of Congress, lay any imposts or duties on	1	10	2
Imports or exports laid by any State shall be for the use of the Treasury. The net produce of all duties on.	1	10	2
Imports or exports shall be subject to the revision and control of Congress. All laws of States laying duties on	1	10	2
Imposts and excises. Congress shall have power to lay and collect taxes, duties	1	8	1
Shall be uniform throughout the United States. All taxes, duties	1	8	1
Inability of the President, the powers and duties of his office shall devolve on the Vice-President. In case of the death, resignation, or	2	1	5
Inability of the President or Vice-President. Congress may provide by law for the case of the removal, death, resignation, or	2	1	5
Indian tribes. Congress shall have power to regulate commerce with the	1	8	3
Indictment or presentment of a grand jury. No person shall be held to answer for a capital or infamous crime unless on. [Amendments]	5	—	—
Except in cases arising in the land or naval forces or in the militia when in actual service. [Amendments]	5	—	—

	Art.	Sec.	Cl.
Indictment, trial, judgment, and punishment, according to law. The party convicted in case of impeachment shall nevertheless be liable and subject to	1	3	7
Infamous crime unless on presentment or indictment of a grand jury. No person shall be held to answer for a capital or. [Amendments]	5	—	—
Inferior courts. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
Inferior courts as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such	3	1	—
The judges of both the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
Inferior officers in the courts of law, in the President alone, or in the heads of Departments. Congress, if they think proper, may by law vest the appointment of	2	2	2
Inhabitant of the State for which he shall be chosen. No person shall be a Senator who shall not have attained the age of thirty years, been nine years a citizen of the United States, and who shall not, when elected, be an	1	3	3
Insurrection or rebellion against the United States. No person shall be a Senator or Representative in Congress, or Presidential elector, or hold any office, civil or military, under the United States, or any State, who, having taken an oath as a legislative, executive, or judicial officer of the United States, or of a State, afterwards engaged in. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disabilities. [Amendments]	14	3	—
Debts declared illegal and void which were contracted in aid of. [Amendments]	14	4	—
Insurrections and repel invasions. Congress shall provide for calling forth the militia to suppress	1	8	15
Invasion. No State shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of delay	1	10	3
The writ of habeas corpus shall not be suspended unless in case of rebellion or	1	9	1
Invasion and domestic violence. The United States shall protect each State against	4	4	—
Invasions. Congress shall provide for calling forth the militia to suppress insurrections and repel	1	8	15
Inventors and authors in their inventions and writings. Congress may pass laws to secure for limited times exclusive rights to	1	8	8
Involuntary servitude, except as a punishment for crime abolished in the United States. Slavery and. [Amendments]	13	1	—

J.

Jeopardy of life or limb for the same offense. No person shall be twice put in. [Amendments]	5	—	—
Journal of its proceedings. Each House shall keep a	1	5	3
Judges in every State shall be bound by the Constitution, the laws made in pursuance thereof, and treaties of the United States, which shall be the supreme law of the land	6	—	2
Judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—

	Art.	Sec.	Cl.
Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold any office of honor, trust, or profit under the United States	1	3	7
But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law	1	3	7
Judicial power of the United States. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish	3	1	—
The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
It shall extend to all cases in law and equity arising under the Constitution, laws, and treaties of the United States	3	2	1
To all cases affecting ambassadors, other public ministers and consuls	3	2	1
To all cases of admiralty and maritime jurisdiction	3	2	1
To controversies to which the United States shall be a party	3	2	1
To controversies between two or more States	3	2	1
To controversies between a State and citizens of another State	3	2	1
To controversies between citizens of different States	3	2	1
To controversies between citizens of the same State claiming lands under grants of different States	3	2	1
To controversies between a State or its citizens and foreign states, citizens, or subjects	3	2	1
In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction	3	2	2
In all other cases before mentioned it shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make	3	2	2
The trial of all crimes, except in cases of impeachment, shall be by jury	3	2	3
The trial shall be held in the State where the crimes shall have been committed	3	2	3
But when not committed in a State, the trial shall be at such place or places as Congress may by law have directed	3	2	3
The judicial power of the United States shall not be held to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. [Amendments]	11	—	—
Judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts, records, and	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Judicial and executive officers of the United States and of the several States shall be bound by an oath to support the Constitution	6	—	3
Judiciary. The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a State may be a party	3	2	2
The Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and regulations as Congress may make	3	2	2
Junction of two or more States or parts of States without the consent of the legislatures and of Congress. No State shall be formed by the	4	3	1
Jurisdiction of another State. No new State shall, without the consent of Congress, be formed or erected within the	4	3	1

	Art.	Sec.	Cl.
Jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress may make. The Supreme Court shall have appellate	3	2	2
Jurisdiction. In all cases affecting ambassadors, and other public ministers and consuls, and in cases where a State is a party, the Supreme Court shall have original	3	2	2
Jury. The trial of all crimes, except in cases of impeachment, shall be by	3	2	3
In all criminal prosecutions the accused shall have a speedy and public trial by. [Amendments]	6	—	—
All suits at common law, where the value exceeds twenty dollars shall be tried by. [Amendments]	7	—	—
Where a fact has been tried by a jury it shall not be re-examined except by the rules of the common law. [Amendments]	7	—	—
Just compensation. Private property shall not be taken for public use without. [Amendments]	5	—	—
Justice, insure domestic tranquillity, etc. To establish. [Preamble]	—	—	—

L.

Labor, in one State, escaping into another, shall be delivered up to the party to whom such service or labor may be due. Fugitives from service or	4	2	3
Land and naval forces. Congress shall make rules for the government and regulation of the	1	8	14
Law and fact, with exceptions and under regulations to be made by Congress. The Supreme Court shall have appellate jurisdiction as to	3	2	2
Law of the land. The Constitution, the laws made in pursuance thereof, and treaties of the United States shall be the supreme	6	—	2
The judges in every State shall be bound thereby	6	—	2
Law of nations. Congress shall provide for punishing offenses against the	1	8	10
Laws. Congress shall have power to provide for calling forth the militia to suppress insurrection, repel invasions, and to execute the	1	8	15
Laws and treaties of the United States. The judicial power shall extend to all cases in law and equity arising under the Constitution or the	3	2	1
Laws necessary to carry into execution the powers vested in the Government, or in any department or officer of the United States. Congress shall have power to make all	1	8	18
Legal tender in payment of debts. No State shall make anything but gold and silver coin a	1	10	1
Legislation in all cases over such district as may become the seat of government. Congress shall have power to exercise exclusive	1	8	17
Over all places purchased by consent of the legislatures in the different States for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall have power to exercise exclusive	1	8	17
Legislation. Congress shall have power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof	1	8	18
Congress shall have power to enforce the thirteenth amendment by appropriate. [Amendments]	13	2	—
Congress shall have power to enforce the fourteenth amendment by appropriate. [Amendments]	14	5	—
Congress shall have power to enforce the fifteenth amendment by propriate. [Amendments]	15	2	—
Legislative powers herein granted shall be vested in a Congress. All	1	1	—
Legislature or the executive (when the legislature can not be convened). The United States shall protect each State against invasion; and against domestic violence on the application of the	4	4	—

	Art.	Sec.	Cl.
Legislatures of two-thirds of the States, Congress shall call a convention for proposing amendments to the Constitution. On the application of the	5	—	—
Letters of marque and reprisal. Congress shall have power to grant	1	8	11
No State shall grant	1	10	1
Liberty to ourselves and our posterity, etc. To secure the blessings of [Preamble]	—	—	—
Life, liberty, and property without due process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of. [Amendments]	5	—	—
No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of. [Amendments]	14	1	—
Life or limb for the same offense. No person shall be twice put in jeopardy of. [Amendments.]	5	—	—
Loss or emancipation of any slave shall be held illegal and void. Claims for the. [Amendments.]	14	4	—

M.

Magazines, arsenals dockyards, and other needful buildings. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17
Majority of each House shall constitute a quorum to do business	1	5	1
But a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
Majority of all the States shall be necessary to a choice	1	5	1
When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from two-thirds of the States; but a. [Amendments.]	12	—	—
When the choice of a Vice-President shall devolve on the Senate, a quorum shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. [Amendments.]	12	—	—
Maritime jurisdiction. The judicial power shall extend to all cases of admiralty and	3	2	1
Marque and reprisal. Congress shall have power to grant letters of	1	8	11
No State shall grant any letters of	1	10	1
Maryland entitled to six Representatives in the First Congress	1	2	3
Massachusetts entitled to eight Representatives in the First Congress	1	2	3
Measures. Congress shall fix the standard of weights and	1	8	5
Meeting of Congress. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day	1	4	2
Members of Congress and of State legislatures shall be bound by oath or affirmation to support the Constitution	6	—	3
Militia to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for calling forth the	1	8	15
Congress shall provide for organizing, arming, and disciplining the	1	8	16
Congress shall provide for governing such part of them as may be employed by the United States	1	8	16
Reserving to the States the appointment of the officers and the right to train the militia according to the discipline prescribed by Congress	1	8	16
A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments.]	2	—	—
Misdemeanors. The President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and	2	4	—

	Art.	Sec.	Cl.
Money on the credit of the United States. Congress shall have power to borrow	1	8	2
Regulate the value thereof and of foreign coin. Congress shall have power to coin	1	8	5
Shall be drawn from the Treasury but in consequence of appropriations made by law. No	1	9	7
Shall be published from time to time. A regular statement and account of receipts and expenditures of public	1	9	7
For raising and supporting armies. No appropriation of money shall be for a longer term than two years	1	8	12

N.

Nations. Congress shall have power to regulate commerce with foreign	1	8	3
Congress shall provide for publishing offenses against the law of	1	8	10
Natural-born citizens, or a citizen at the adoption of the Constitution, shall be eligible to the office of President. No person except a	2	1	4
Naturalization. Congress shall have power to establish a uniform rule of	1	8	4
Naturalized in the United States, and subject to their jurisdiction, shall be citizens of the United States and of the State in which they reside. All persons born or. [Amendments.]	14	1	—
Naval forces. Congress shall make rules and regulations for the government and regulation of the land and	1	8	14
Navy. Congress shall have power to provide and maintain a	1	8	13
New Hampshire entitled to three Representatives in the First Congress	1	2	3
New Jersey entitled to four Representatives in the First Congress	1	2	3
New States may be admitted by Congress into this Union	4	3	1
But no new State shall be formed within the jurisdiction of another State without the consent of the legislature and of Congress	4	3	1
Nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures and of Congress	4	3	1
New York entitled to six Representatives in the First Congress	1	2	3
Nobility shall be granted by the United States. No title of	1	9	8
No State shall grant any title of	1	10	1
Nominations for office by the President. The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public officers	2	2	2
He may grant commissions to fill vacancies that happen in the recess of the Senate, which shall expire at the end of their next session	2	2	3
North Carolina entitled to five Representatives in the First Congress	1	2	3
Number of electors for President and Vice-President in each State shall be equal to the number of Senators and Representatives to which such State may be entitled in Congress	2	1	2

O.

Oath of office of the President of the United States. Form of the	2	1	7
Oath or affirmation. No warrants shall be issued but upon probable cause, supported by. [Amendments]	4	—	—
Oath or affirmation to support the Constitution. Senators and Representatives, members of State legislatures, executive and judicial officers of the United States and of the several States, shall be bound by	6	—	3
But no religious test shall ever be required as a qualification for office	6	—	3
The Senators when sitting to try impeachment shall be on	1	3	6
Objections. If he shall not approve it, the President shall return the bill to the House in which it originated with his	1	7	2
Obligation of contracts. No State shall pass any *ex post facto* law, or law impairing the	1	10	1

	Art.	Sec.	Cl.
Obligations incurred in aid of insurrection or rebellion against the United States to be held illegal and void. All debts or. [Amendments]....	14	4	—
Offense. No person shall be twice put in jeopardy of life or limb for the same. [Amendments]	5	—	—
Offenses against the law of nations. Congress shall provide for punishing..	1	8	10
Offenses against the United States, except in cases of impeachment. The President may grant reprieves or pardons for	2	2	1
Office under the United States. No person shall be a member of either House while holding any civil	1	6	2
No Senator or Representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the term for which he is elected	1	6	2
Or title of any kind from any king, prince, or foreign State, without the consent of Congress. No person holding any office under the United States shall accept of any present, emolument	1	9	8
Office of President, in case of his removal, death, resignation, or inability, shall devolve on the Vice-President. The powers and duties of the	2	1	5
Office during the term of four years. The President and Vice-President shall hold	2	1	1
Of trust or profit under the United States shall be an elector for President and Vice-President. No person holding an	2	1	2
Office, civil or military, under the United States, or any State, who had taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterwards engaged in insurrection or rebellion. No person shall be a Senator, Representative, or Presidential elector, or hold any. [Amendments]	14	3	—
Officers in the President alone, in the courts of law, or in the heads of Departments. Congress may vest the appointment of inferior.....	2	2	2
Officers of the United States shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. The President, Vice-President, and all civil	2	4	—
Officers. The House of Representatives shall choose their Speaker and other	1	2	5
The Senate, in the absence of the Vice-President, shall choose a President pro tempore, and also their other	1	3	5
Offices becoming vacant in the recess of the Senate may be filled by the President, the commissions to expire at the end of the next session..	2	2	3
One-fifth of the members present, be entered on the journal of each House. The yeas and nays shall, at the desire of	1	5	3
Opinion of the principal officers in each of the Executive Departments on any subject relating to their duties. The President may require the written	2	2	1
Order, resolution, or vote (except on a question of adjournment), requiring the concurrence of the two Houses, shall be presented to the President. Every	1	7	3
Original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and in which a State may be a party. The Supreme Court shall have	3	2	2
Overt act, or on confession in open court. Conviction of treason shall be on the testimony of two witnesses to the	3	3	1

P.

Pardons, except in cases of impeachment. The President may grant reprieves and	2	2	1
Patent rights to inventors. Congress may pass laws for securing.....	1	8	8

	Art.	Sec.	Cl.
Peace. Members of Congress shall not be privileged from arrest for treason, felony, and breach of the	1	6	1
No State shall, without the consent of Congress, keep troops, or ships of war in time of	1	10	3
No soldier shall be quartered in any house without the consent of the owner in time of. [Amendments]	3	—	—
Pensions and bounies, shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments]	14	4	—
Pennsylvania entitled to eight Representatives in the First Congress	1	2	3
People peaceably to assemble and petition for redress of grievances shall not be abridged by Congress. The right of the. [Amendments]	1	—	—
To keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the. [Amendments]	2	—	—
To be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. The right of the. [Amendments]	4	—	—
The enumeration of certain rights in the Constitution shall not be held to deny or disparage others retained by the. [Amendments]	9	—	—
Powers not delegated to the United States, nor prohibited to the States are reserved to the States or to the. [Amendments]	10	—	—
Perfect Union, etc. To establish a more. [Preamble]	—	—	—
Persons, houses, papers, and effects against unreasonable searches and seizures. The people shall be secure in their. [Amendments]	4	—	—
Persons as any State may think proper to admit, shall not be prohibited prior to 1808. The migration or importation of such	1	9	1
But a tax or duty of ten dollars shall be imposed on the importation of each of such	1	9	1
Pétition for the redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to. [Amendments]	1	—	—
Piracies and felonies committed on the high seas. Congress shall define and punish	1	8	10
Place than that in which the two Houses shall be sitting. Neither House during the session shall, without the consent of the other, adjourn for more than three days, nor to any other	1	5	4
Places of choosing Senators. Congress may by law make or alter regulations for the election of Senators and Representatives, except as to the	1	4	1
Ports of one State over those of another. Preference shall not be given by any regulation of commerce or revenue to the	1	9	6
Ports. Vessels clearing from the ports of one State shall not pay duties in another	1	9	6
Post-offices and post-roads. Congress shall establish	1	8	7
Powers herein granted shall be vested in Congress. All legislative	1	1	—
Powers vested by the Constitution in the Government or in any Department or officer of the United States. Congress shall make all laws necessary to carry into execution the	1	8	18
Powers and duties of the office shall devolve on the Vice-President on the removal, death, resignation, or inability of the President. The	2	1	5
Powers not delegated to the United States nor prohibited to the States are reserved to the States and to the people. [Amendments]	10	—	—
The enumeration of certain rights in this Constitution shall not be held to deny or disparage others retained by the people. [Amendments]	9	—	—
Preference, by any regulation of commerce or revenue, shall not be given to the ports of one State over those of another	1	9	6

	Art.	Sec.	Cl.
Prejudice any claims of the United States or of any particular State respecting the territory or property of the United States. Nothing in this Constitution shall	4	3	2
Present, emolument, office, or title of any kind whatever from any king, prince, or foreign State. No person holding any office under the United States shall, without the consent of Congress, accept any	1	9	8
Presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service. No person shall be held to answer for a capital or otherwise infamous crime unless on a. [Amendments]	5	—	—
President of the United States. The Senate shall choose a President pro tempore when the Vice-President shall exercise the office of	1	3	5
The Chief Justice shall preside upon the trial of the	1	3	6
Shall approve and sign all bills passed by Congress before they shall become laws	1	7	2
Shall return to the House in which it originated, with his objections, any bill which he shall not approve	1	7	2
If not returned within ten days (Sundays excepted) it shall become a law, unless Congress shall adjourn before the expiration of that time	1	7	2
Every order, resolution, or vote which requires the concurrence of both Houses, except on a question of adjournment, shall be presented to the	1	7	3
If disapproved by him, shall be returned and proceeded on as in the case of a bill	1	7	3
The executive power shall be vested in a	2	1	1
He shall hold his office during the term of four years	2	1	1
In case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of his office, the Vice-President shall perform the duties of	2	1	5
Congress may declare, by law, in the case of the removal, death, resignation, or inability of the President, what officer shall act as	2	1	5
The President shall receive a compensation which shall not be increased nor diminished during his term, nor shall he receive any other emolument from the United States	2	1	6
Before he enters upon the execution of his office he shall take an oath of office	2	1	7
Shall be Commander in Chief of the Army and Navy, and of the militia of the States when called into actual service	2	2	1
He may require the opinion, in writing, of the principal officer in each of the Executive Departments	2	2	1
He may make treaties, by and with the advice and consent of the Senate, two-thirds of the Senators present concurring	2	2	2
He may appoint, by and with the advice and consent of the Senate, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments may be authorized by law and not herein provided for	2	2	2
Congress may vest the appointment of inferior officers in the	2	2	2
He may fill up all vacancies that may happen in the recess of the Senate by commissions which shall expire at the end of their next session	2	2	3
He shall give information to Congress of the state of the Union, and recommend measures	2	3	—
On extraordinary occasions he may convene both Houses or either House of Congress	2	3	—
In case of disagreement between the two Houses as to the time of adjournment, he may adjourn them to such time as he may think proper	2	3	—
He shall receive ambassadors and other public ministers	2	3	—

	Art.	Sec.	Cl.
He shall take care that the laws be faithfully executed	2	3	—
He shall commission all the officers of the United States	2	3	—
Shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors	2	4	—
No person except a natural-born citizen or a citizen of the United States at the adoption of the Constitution shall be eligible to the office of	2	1	4
No person who shall not have attained the age of thirty-five years and been fourteen years a citizen of the United States shall be eligible to the office of	2	1	4
President and Vice-President. Manner of choosing. Each State, by its legislature, shall appoint a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress	2	1	2
No Senator or Representative or person holding an office of trust or profit under the United States shall be an elector	2	1	2
Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States	2	1	3
The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—
They shall name in distinct ballots the person voted for as President and the person voted for as Vice-President. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as President and as Vice-President, which they shall sign and certify and transmit sealed to the President of the Senate at the seat of government. [Amendments]	12	—	—
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. [Amendments]	12	—	—
The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed. [Amendments]	12	—	—
If no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. [Amendments]	12	—	—
In choosing the President, the votes shall be taken by States, the representation from each State having one vote. [Amendments]	12	—	—
A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	—	—
But if no choice shall be made before the 4th of March next following then the Vice-President shall act as President, as in the case of the death or disability of the President. [Amendments]	12	—	—
President of the Senate, but shall have no vote unless the Senate be equally divided. The Vice-President shall be	1	3	4
President pro tempore. In the absence of the Vice-President the Senate shall choose a	1	3	5
When the Vice-President shall exercise the office of President of the United States, the Senate shall choose a	1	3	5
Press. Congress shall pass no law abridging the freedom of speech or of the. [Amendments]	1	—	—
Previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or. [Amendments]	15	1	—

	Art.	Sec.	Cl.
Private property shall not be taken for public use without just compensation. [Amendments]	5	—	—
Privilege. Senators and Representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same	1	6	1
They shall not be questioned for any speech or debate in either House in any other place	1	6	1
Privileges and immunities of citizens of the United States. The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States	4	2	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—
No person shall be twice put in jeopardy of life or limb for the same offense. [Amendments]	5	—	—
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—
No State shall make or enforce any law which shall abridge the. [Amendments]	14	1	—
No State shall deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Prizes captured on land or water. Congress shall make rules concerning	1	8	11
Probable cause. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue for such but upon. [Amendments]	4	—	—
Process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due. [Amendments]	5	—	—
No State shall deprive any person of life, liberty, or property without due. [Amendments]	14	1	—
Process for obtaining witnesses in his favor. In all criminal prosecutions the accused shall have. [Amendments]	6	—	—
Progress of science and useful arts. Congress shall have power to promote the	1	8	8
Property of the United States. Congress may dispose of and make all needful rules and regulations respecting the territory or	4	3	2
Property without due process of law. No person shall be compelled in any criminal case to be a witness against himself; nor shall he be deprived of his life, liberty, or, [Amendments]	5	—	—
No State shall abride the privileges or immunities of citizens of the United States, nor deprive any person of his life, liberty, or. [Amendments]	14	1	—
Prosecutions. The accused shall have a speedy and public trial in all criminal. [Amendments]	6	—	—
He shall be tried by a jury in the State or district where the crime was committed. [Amendments]	6	—	—
He shall be informed of the nature and cause of the accusation. [Amendments]	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—
He shall have compulsory process for obtaining witnesses. [Amendments]	6	—	—
He shal' have counsel for his defense. [Amendments]	6	—	—
Protection of the laws. No State shall deny to any person within its jurisdiction the equal. [Amendments]	14	1	—
Public debt of the United States incurred in suppressing insurrection or rebellion shall not be questioned. The validity of the. [Amendments]	14	4	—

	Art.	Sec.	Cl.
Public safety may require it. The writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the	1	9	2
Public trial by jury. In all criminal prosecutions the accused shall have a speedy and. [Amendments]	6	—	—
Public use. Private property shall not be taken for, without just compensation. [Amendments]	5	—	—
Punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and	1	3	7
Punishments inflicted. Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual. [Amendments]	8	—	—

Q.

Qualification for office. No religious test shall ever be required as a	6	—	3
Qualifications of electors of members of the House of Representatives shall be the same as electors for the most numerous branch of the State legislature	1	2	1
Qualifications of members of the House of Representatives. They shall be twenty-five years of age, seven years a citizen of the United States, and an inhabitant of the State in which chosen	1	2	2
Qualifications of Senators. They sahll be thirty years of age, nine years a citizen of the United States, and an inhabitant of the State in which chosen	1	3	3
Of its own members. Each House shall be the judge of the election, returns, and	1	5	1
Of the President. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President	2	1	4
Neither shall any person be eligible to the office of President who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States	2	1	4
Of the Vice-President. No person constitutionally ineligible to the office of President shall be eligible to that of Vice-President. [Amendments]	12	—	—
Quartered in any house without the consent of the owner in time of peace. No soldier shall be. [Amendments]	3	—	—
Quorum to do business. A majority of each House shall constitute a	1	5	1
But a smaller number than a quorum may adjourn from day to day, and may be authorized to compel the attendance of absent members	1	5	1
Of the House of Representatives for choosing a President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	—	—
Quorum to elect a Vice-President by the Senate. Two-thirds of the whole number of Senators shall be a. [Amendments)	12	—	—
A majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—

R.

Race, color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of. [Amendments]	15	1	—
Ratification of amendments to the Constitution shall be by the legislatures of three-fourths of the several States or by conventions in three-fourths of the States , accordingly as Congress may propose	5	—	—

	Art.	Sec.	Cl.
Ratification of the conventions of nine States shall be sufficient to establish the Constitution between the States so ratifying the same	7	—	—
Ratio of representation until the first enumeration under the Constitution shall be made not to exceed one for every thirty thousand	1	2	3
Ratio of representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. [Amendments]	14	2	—
Ratio. But when the right to vote for Presidential electors or members of Congress, or the legislative, executive, and judicial officers of the State, except for engaging in rebellion or other crime, shall be denied or abridged by a State, the basis of representation shall be reduced therein in the proportion of such denial or abridgement of the right to vote. [Amendments]	14	2	—
Rebellion against the United States. Persons who, while holding certain Federal and State offices, took an oath to support the Constitution, afterwards engaged in insurrection or rebellion, disabled from holding office under the United States. [Amendments]	14	3	—
But Congress may by a vote of two-thirds of each House remove such disability. [Amendments]	14	3	—
Rebellion against the United States. Debts incurred for pensions and bounties for services in suppressing the rebellion shall not be questioned. [Amendments]	14	4	—
All debts and obligations incurred in aid of the rebellion, and all claims for the loss or emancipation of slaves, declared and held to be illegal and void. [Amendments]	14	4	—
Rebellion or invasion. The writ of *habeas corpus* shall not be suspended except when the public safety may require it in cases of	1	9	2
Receipts and expenditures of all public money shall be published from time to time. A regular statement of	1	9	7
Recess of the Senate. The President may grant commissions, which shall expire at the end of the next session, to fill vacancies that may happen during the	2	2	3
Reconsideration of a bill returned by the President with his objections. Proceedings to be had upon the	1	7	2
Records, and judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and petition for the. [Amendments]	1	—	—
Regulations, except as to the places of choosing Senators. The time, places, and manner of holding elections for Senators and Representatives shall be prescribed by the legislatures of the States, but Congress may at any time by law make or alter such	1	4	1
Regulations of commerce or revenue. Preference to the ports of one State over those of another shall not be given by any	1	9	6
Religion or prohibiting the free exercise thereof. Congress shall make no law respecting the establishment of [Amendments]	1	—	—
Religious test shall ever be required as a qualification for any officer or public trust under the United States. No	6	—	3
Removal of the President from office, the same shall devolve on the Vice-President. In case of the	2	2	1
Representation. No State, without its consent, shall be deprived of its equal suffrage in the Senate	5	—	—
Representation and direct taxation, how apportioned among the several States. [This provision is changed by the fourteenth amendment, section 2	1	2	3

	Art.	Sec.	Cl.
Representation until the first enumeration under the Constitution not to exceed one for every thirty housand. The ratio of	1	2	3
Representation in any State. The executive thereof shall issue writs of election to fill vacancies in the	1	2	4
Representation among the several States shall be according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The ratio of. [Amendments]	14	2	—
Representation. But where the right to vote in certain Federal and State elections is abridged for any cause other than rebellion or other crime the basis of representation shall be reduced. [Amendments]	14	2	—
Representatives. Congress shall consist of a Senate and House of	1	1	—
Qualifications of electors of members of the House of	1	2	1
No person shall be a Representative who shall not have attained the age of twenty-five years, been seven years a citizen of the United States, and an inhabitant of the State in which he shall be chosen	1	2	2
Shall choose their Speaker and other officers. The House of	1	2	5
Shall have the sole power of impeachment. The House of	1	2	5
Executives of the States shall issue writs of election to fill vacancies in the House of	1	2	4
The times, places, and manner of choosing Representatives shall be prescribed by the legislatures of the States	1	4	1
But Congress may at any time by law make or alter such regulations except as to the places of choosing Senators	1	4	1
And Senators shall receive a compensation to be ascertained by law	1	6	1
Shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at the session of the House, and in going to and returning from the same	1	6	1
Shall not be questioned in any other place for any speech or debate. Members of the House of	1	6	1
No member shall be appointed during his term to any civil office which shall have been created, or the emoluments of which shall have been increased, during such term	1	6	2
No person holding any office under the United States shall, while holding such office, be a member of the House of	1	6	2
All bills for raising revenue shall originate in the House of	1	7	1
No Senator or Representative shall be an elector for President or Vice-President	2	1	2
Shall be bound by an oath or affirmation to support the Constitution of the United States. The Senators and	6	—	3
Representatives among the several States. Provisions relative to the apportionment of. [Amendments]	14	2	—
Representatives and Senators. Prescribing certain disqualifications for office as. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disqualification. [Amendments]	14	3	—
Reprieves and pardons except in cases of impeachments. The President may grant	2	2	1
Reprisal. Congress shall have power to grant letters of marque and	1	8	11
No State shall grant any letters of marque and	2	10	1
Republican form of government. The United States shall guarantee to every State in this Union a	4	4	—
And shall protect each of them against invasion; and on the application of the legislature or of the executive (when the legislature can not be convened), against domestic violence	4	4	—
Reserved rights of the States and the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. [Amendments]	9	—	—

	Art.	Sec.	Cl.
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people. [Amendments]	10	—	—
Resignation, or inability of the President, the duties and powers of his office shall devolve on the Vice-President. In case of the death	2	1	5
Resignation, or inability of the President. Congress may by law provide for the case of the removal, death	2	1	5
Resolution, or vote (except on a question of adjournment) requiring the concurrence of the two Houses shall, before it becomes a law, be presented to the President. Every order	1	7	3
Revenue shall originate in the House of Representatives. All bills for raising	1	7	1
Revenue. Preference shall not be given to the ports of one State over those of another by any regulations of commerce or	1	9	6
Rhode Island entitled to one Representative in the First Congress	1	2	3
Right of petition. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the redress of grievances. [Amendments]	1	—	—
Right to keep and bear arms. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments]	2	—	—
Rights in the Constitution shall not be construed to deny or disparage others retained by the people. The enumeration of certain. [Amendments]	9	—	—
Rights not delegated to the United States nor prohibited to them are reserved to the Sates respectively or to the people. [Amendments]	10	—	—
Rules of its proceedings. Each House may determine the	1	5	2
Rules and regulations respecting the territory or other property of the United States. Congress shall dispose of and make all needful	4	3	2
Rules of the common law. All suits involving over twenty dollars shall be tried by jury according to the. [Amendments]	7	—	—
No fact tried by a jury shall be re-examined except according to the [Amendments]	7	—	—

S.

Science and the useful arts by securing to authors and inventors the exclusive right to their writings and discoveries. Congress shall have power to promote the progress of	1	8	8
Searches and seizures shall not be violated. The right of the people to be secure against unreasonable. [Amendments]	4	—	—
Searches and seizures. And no warrants shall be issued but upon probable cause, on oath or affirmation, describing the place to be searched and the person or things to be seized. [Amendments]	4	—	—
Seat of government. Congress shall exercise exclusive legislation in all cases over such district as may become the	1	8	17
Securities and current coin of the United States. Congress shall provide for punishing the counterfeitinf of the	1	8	6
Security of a free State, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the. [Amendments]	2	—	—
Senate and House of Representatives. The Congress of the United States shall consist of a	1	1	—
Senate of the United States. The Senate shall be composed of two Senators from each State, chosen by the legislature for six years	1	3	1
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2

	Art.	Sec.	Cl.
The Vice-President shall be President of the Senate, but shall have no vote unless the Senate be equally divided	1	3	4
The Senate shall choose their other officers, and also a President pro-tempore in the absence of the Vice-President or when he shall exercise the office of President	1	3	5
The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation	1	3	6
When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present	1	3	6
It shall be the judge of elections, returns, and qualifications of its own members	1	5	1
A majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members	1	5	1
It may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds expel a member	1	5	2
It shall keep a journal of its proceedings, and from time to time publish the same, except such parts as may in their judgment require secrecy.	1	5	3
It shall not adjourn for more than three days during a session without the consent of the other House	1	5	4
It may propose amendments to bills for raising revenue, but such bills shall originate in the House of Representatives	1	7	1
The Senate shall alvise and consent to the ratification of all treaties, provided two-thirds of the members present concur	2	2	2
It shall advise and consent to the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers not herein otherwise provided for	2	2	2
It may be convened by the President on extraordinary occasions	2	3	—
No State without its consent, shall be deprived of its equal suffrage in the Senate	5	—	—
Senators shall, immediately after assembling, under their first election, be divided into three classes, so that the seats of one-third shall become vacant at the expiration of every second year	1	3	2
No person shall be Senator who shall not be thirty years of age, nine years a citizen of the United States, and an inhabitant when elected of the State for which he shall be chosen	1	3	3
The times, places, and manner of choosing Senators may be fixed by the legislature of a State, but Congress may by law make or alter such regulations, except as to the place of choosing	1	4	1
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the Senate and in going to and returning from the same	1	6	1
Slave. Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or any claim for the loss or emancipation of any. [Amendments]	14	4	—
Slavery nor involutary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any places subject to their jurisdiction. Neither. [Amendments]	13	1	—
Soldiers shall not be quartered, in time of peace, in any house without the consent of the owner. [Amendments]	3	—	—
South Carolina entitled to five Representatives in the First Congress	1	2	3
Speaker and other officers. The House of Representatives shall choose their	1	2	5

	Art.	Sec.	Cl.
Speech or of the press. Congress shall make no law abridging the freedom of. [Amendments]	1	—	—
Speedy and public trial by a jury. In all criminal prosecutions the accused shall have a. [Amendments]	6	—	—
Standard of weights and measures. Congress shall fix the	1	8	5
State of the Union. The President shall, from time to time, give Congress information of the	2	3	—
State legislatures, and all executive and judicial officers of the United States, shall take an oath to support the Constitution. All members of the several	6	—	3
States. When vacancies happen in the representation from any State, the executive authority shall issue writs of election to fill such vacancies.	1	2	4
Congress shall have power to regulate commerce among the several	1	8	3
No State shall enter into any treaty, alliance, or confederation	1	10	1
Shall not grant letters of marque and reprisal	1	10	1
Shall not coin money	1	10	1
Shall not emit bills of credit	1	10	1
Shall not make anything but gold and silver coin a tender in payment of debts	1	10	1
Shall not pass any bill of attainder, *ex post facto law,* or law impairing the obligation of contracts	1	10	1
Shall not grant any title of nobility	1	10	1
Shall not, without the consent of Congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection laws	1	10	2
Shall not, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded or in such imminent danger as will not admit of delay	1	10	3
Full faith and credit in every other State shall be given to the public acts, records, and judicial proceedings of each State	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States	4	2	1
New States may be admitted by Congress into this Union	4	3	1
But no new State shall be formed or erected within the jurisdiction of another State	4	3	1
Nor any State formed by the junction of two or more States or parts of States, without the consent of the legislatures as well as of Congress	4	3	1
No State shall be deprived, without its consent, of its equal suffrage in the Senate	5	—	—
Three-fourths of the legislatures of the States or conventions of three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution	5	—	—
The United States shall guarantee a republican form of government to every State in the Union	4	4	—
They shall protect each State against invasion	4	4	—
And on application of the legislature, or the executive (when the legislature can not be conveyed), against domestic violence	4	4	—
The ratification by nine States shall be sufficient to establish the Constitution between the States so ratifying the same	7	—	—
When the choice of President shall devolve on the House of Representatives, the vote shall be taken by States. [Amendments]	12	—	—
But in choosing the President the vote shall be taken by States, the representation from each State having one vote. [Amendments]	12	—	—

	Art.	Sec.	Cl.
A quorum for choice of President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	—	—
States or to the people. Powers not delegated to the United States, nor prohibited to the States, are reserved to the. [Amendments]	10	—	—
Suffrage in the Senate. No State shall be deprived without its consent of its equal	5	—	—
Suits at common law, where the value in controversy shall exceed twtnty dollars, shall be tried by a jury. [Amendments]	7	—	—
In law or equity against one of the States by citizens of another State or by citizens of a foreign State. The judicial power of the United States shall not extend to. [Amendments]	11	—	—
Supreme Court. Congress shall have power to constitute tribunals inferior to the	1	8	9
Supreme Court, and such inferior courts as Congress may establish. The judicial power of the United States shall be vested in one	3	1	—
The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
The compensation of the judges shall not be diminished during their continuance in office	3	1	—
Supreme Court shall have original jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and in which a State may be a party. The	3	2	2
Shall have appellate jurisdiction, both as to law and fact, with such exceptions and regulations as Congress may make. The	3	2	2
Supreme law of the land. This Constitution, the laws made in pursuance thereof, and the treaties of the United States shall be the	6	—	2
The judges in every State shall be bound thereby	6	—	2
Suppress insurrections, and repel invasions. Congress shall provide for calling forth the militia to execute the laws	1	8	15
Suppression of insurrection or rebellion, shall not be questioned. The public debt, including the debt for pensions and bounties incurred in the. [Amendments.]	14	4	—

T.

Tax shall be laid unless in proportion to the census or enumeration. No capitation or other direct	1	9	4
Tax or duty shall be laid on articles exported from any State. No	1	9	5
Taxes (direct) and Representatives, how apportioned among the several States. [See Fourteenth amendment, section 2]	1	2	3
Taxes, duties, imposts, and excises. Congress shall have power to lay	1	8	1
They shall be uniform throughout the United States	1	8	1
Temporary appointments until the next meeting of the legislature. If vacancies happen in the Senate in the recess of the legislature of a State, the executive of the State shall make	1	3	2
Tender in payment of debts. No State shall make anything but gold and silver coin a	1	10	1
Term of four years. The President and Vice-President shall hold their offices for the	2	1	1
Term for which he is elected. No Senator or Representative shall be appointed to any office under the United States which shall have been created or its emoluments increased during the	1	6	2
Territory or other property of the United States. Congress shall dispose of and make all needful rules and regulations respecting the	4	3	2
Test as a qualification for any office or public trust shall ever be required. No religious	6	—	3

	Art.	Sec.	Cl.
Testimony of two witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason except on the.....	3	3	1
Three-fourths of the legislatures of the States, or conventions in three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution	5	—	—
Tie. The Vice-President shall have no vote unless the Senate be equally divided	1	3	4
Times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof....	1	4	1
But Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators	1	4	1
Title of nobility.. The United States shall not grant any.....	1	9	8
No State shall grant any	1	10	1
Title of any kind, from any king, prince, or foreign State, without the consent of Congress. No person holding any office under the United States shall accept of any	1	9	8
Tonnage without the consent of Congress. No State shall lay any duty of	1	10	3
Tranquillity, povide for the common defense, etc. To insure domestic. [Preamble]	—	—	—
Treason shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort	3	3	1
Treason. No person shall, unless on the testimony of two witnesses to the same overt act, or on confession in open court, be convicted of	3	3	1
Congress shall have power to declare the punishment of	3	3	2
Shall not work corruption of blood, Attainder of	3	3	2
Shall not work forfeiture, except during the life of the person attainted. Attainder of.....	3	3	2
Treason, bribery or other high crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed from office on impeachment for and conviction of	2	4	—
Treason, felony, and breach of the peace. Senators and Representatives shall be privileged from arrest while attending or while going to or returning from the sessions of Congress, except in cases of	1	6	1
Treasury, but in consequence of appropriations made by law. No money shall be drawn from the	1	9	7
Treaties. The President shall have power, with the advice and consent of the Senate, provided two-thirds of the Senators present concur, to make	2	2	2
The judicial power shall extend to all cases arising under the Constitution, laws, and	3	2	1
They shall be the supreme law of the land, and the judges in every State shall be bound thereby.....	6	—	2
Treaty, alliance, or confederation. No State shall enter into any	1	10	1
Trial, judgment, and punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from and disqualification for office; but the party convicted shall nevertheless be liable and subject to indictment	1	3	7
Trial by jury. All crimes, except in cases of impeachment, shall be tried by jury	3	2	3
Such trial shall be held in he State within which the crime shall have been committed	3	2	3
But when not committed within a State, the trial shall be at such place as Congress may by law have directed	3	2	3
In all criminal prosecutions the accused shall have a speedy and public. [Amendments]	6	—	—
Suits at common law, when the amount exceeds twenty dollars, shall be by. [Amendments]	7	—	—

	Art.	Sec.	Cl.
Tribunals inferior to the Supreme Court. Congress shall have power to constitute	1	8	9
Troops or ships of war in time of peace without the consent of Congress. No State shall keep	1	10	3
Trust and profit under the United States shall be an elector for President and Vice-President. No Senator, Representative, or person holding any office of	2	1	2
Two-thirds of the members present. No person shall be convicted on impeachment without the concurrence of	1	3	6
Two-thirds, may expel a member. Each House, with the concurrence of	1	5	2
Two-thirds. A bill returned by the President with his objections may be repassed by each House by a vote of	1	7	2
Two-thirds of the Senators present concur. The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided	2	2	2
Two-thirds of the legislatures of the several States. Congress shall call a convention for proposing amendments to the Constitution on the application of	5	—	—
Two-thirds of both Houses shall deem it necessary. Congress shall propose amendments to the Constitution whenever	5	—	—
Two-thirds of the States. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from. [Amendments]	12	—	—
Two-thirds of the whole number of Senators. A quorum of the Senate, when choosing a Vice-President, shall consist of. [Amendments]	12	—	—
Two-thirds, may remove the disabilities imposed by the third section of the fourteenth amendment. Congress, by a vote of. [Amendments]	14	3	—
Two years. Appropriations for raising and supporting armies shall not be for a longer term than	1	8	12

U.

Union. To establish a more perfect. [Preamble]	—	—	—
The President shall, from time to time, give to Congress information of the state of the	2	3	—
New States may be admitted by Congress into this	4	3	1
But no new State shall be formed or erected within the jurisdiction of another State	4	3	1
Unreasonable searches and seizures. The people shall be secured in their persons, houses, papers, and effects against. [Amendments]	4	—	—
And no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. [Amendments]	4	—	—
Unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and. [Amendments]	8	—	—
Use without just compensation. Private property shall not be taken for public. [Amendments]	5	—	—
Useful arts, by securing for limited times to authors and inventors the exclusive right to their writings and inventions. Congress shall have power to promote the progress of science and the	1	8	8

V.

Vacancies happening in the representation of a State. The executive thereof shall issue writs of election to fill	1	2	4
Vacancies happening in the Senate in the recess of the legislature of a State. How filled	1	3	2

	Art.	Sec.	Cl.
Vacancies that happened during the recess of the Senate, by granting commissions which shall expire at the end of the next session. The President shall have power to fill	2	2	3
Validity of the public debt incurred in suppressing insurrection against the United States, including debt for pensions and bounties, shall not be questioned. [Amendments]	14	4	—
Vessels bound to or from the ports of one State shall not be obliged to enter, clear, or pay duties in another State	1	9	6
Veto of a bill by the President. Proceedings of the two Houses upon the	1	7	2
Vice-President of the United States shall be President of the Senate	1	3	4
He shall have no vote unless the Senate be equally divided	1	3	4
The Senate shall elect a President pro tempore in the absence of the	1	3	5
He shall be chosen for the term of four years	2	1	1
The number and the manner of appointing electors for President and	2	1	2
In case of the removal, death, resignation, or inability of the President, the powers and duties of his office shall devolve on the	2	1	5
Congress may provide by law for the case of the removal, death, resignation, or inability both of the President and	2	1	5
On impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors shall be removed from office. The	2	4	—
Vice-President. The manner of choosing the. The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—
The electors shall name, in distinct ballots, the person voted for as Vice-President. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as Vice-President, which lists they shall sign and certify, and send sealed to the seat of government, directed to the President of the Senate. [Amendments]	12	—	—
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. [Amendments]	12	—	—
The person having the greatest number of votes shall be Vice-President, if such number be a majority of the whole number of electors. [Amendments]	12	—	—
If no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President. [Amendments]	12	—	—
A quorum for this purpose shall consist of two-thirds of the whole number of Senators and a majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—
But if the House shall make no choice of a President before the 4th of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. [Amendments]	12	—	—
No person constitutionally ineligible as President shall be eligible as. [Amendments]	12	—	—
Violence. The United States shall guarantee to every State a republican form of government, and shall protect each State against invasion and domestic	4	4	—
Virginia entitled to ten representatives in the First Congress	1	2	3
Vote. Each Senator shall have one	1	3	1
The Vice-President, unless the Senate be equally divided, shall have no	1	3	4
Vote requiring the concurrence of the two Houses (except upon a question of adjournment) shall be presented to the President. Every order, resolution, or	1	7	3

	Art.	Sec.	Cl.
Vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The right of citizens of the United States to. [Amendments]	15	1	—
Vote of two-thirds. Each House may expel a member by a	1	5	2
A bill vetoed by the President may be repassed in each House by a	1	7	2
No person shall be convicted on an impeachment except by a	1	3	6
Whenever both Houses shall deem it necessary, Congress may propose amendments to the Constitution by a	5	—	—
The President may make treaties, with the advice and consent of the Senate, by a	2	2	2
Disabilities incurred by participation in insurrection or rebellion may be relieved by Congress by a. [Amendments]	14	3	—

W.

War, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to declare	1	8	11
For governing the land and naval forces. Congress shall have power to make rules and articles of	1	8	14
No State shall, without the consent of Congress, unless actually invaded, or in such imminent danger as will not admit of delay, engage in	1	10	3
War against the United States, adhering to their enemies, and giving them aid and comfort. Treason shall consist only in levying	3	3	1
Warrants shall issue but upon probable cause, on oath or affirmation, describing the place to be searched, and the persons or things to be seized. No. [Amendments]	4	—	—
Weights and measures. Congress shall fix the standard of	1	8	5
Welfare, and to secure the blessings of liberty, etc. To promote the general. [Preamble]	—	—	—
Welfare. Congress shall have power to provide for the common defense and general	1	8	1
Witness against himself. No person shall, in a criminal case, be compelled to be a. [Amendments]	5	—	—
Witnesses against him. In all criminal prosecutions the accused shall be confronted with the. [Amendments]	6	—	—
Witnesses in his favor. In all criminal prosecutions the accused shall have compulsory process for obtaining. [Amendments]	6	—	—
Witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason unless on the testimony of two	3	3	1
Writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it	1	9	2
Writs of election to fill vacancies in the representation of any State. The executive of the State shall issue	1	2	4
Written opinion of the principal officer in each of the Executive Departments on any subject relating to the duties of his office. The President may require the	2	2	1

Y.

Yeas and nays of the members of either House shall, at the desire of one-fifth of those present, be entered on the journals	1	5	3
The votes of both Houses upon the reconsideration of a bill returned by the President with his objections shall be determined by	1	7	2

THE GENERAL STATUTES

OF THE

STATE OF FLORIDA.

FIRST DIVISION

OF GENERAL PROVISIONS APPLICABLE TO THE WHOLE REVISION, THE POLITICAL AND CIVIL ORGANIZATION OF THE STATE, AND SANITARY, POLICE, AND PUBLIC COMMERCIAL REGULATIONS.

(NOTE.—The numbers of Sections in parenthesis refer to the Section number of the Revised Statutes of 1892.)

TITLE I.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE REVISION.

CHAPTER I.

GENERAL PROVISIONS.

1. (1.) Definitions.—In determining the meaning of these General Statutes, words importing the singular number may extend or be applied to several persons or things; words importing the plural number may be applied to one person or thing; words importing the masculine gender may be applied to that which is female or neuter; the word "person" may extend and be applied to a corporation; "writing" includes printing on paper; the terms "insane person" and "lunatic" include every idiot, non compos, lunatic, and insane person; the term "negro" includes every person having one-eighth or more negro blood; the terms "colored person" or "persons of color" or "colored," as applied to any person, have the same signification as is herein attached to "negro," as aforesaid; the reference to any officer shall include any person authorized by law to perform the duties of such office, unless the context shows that such words were intended to be used in a more limited sense; and the requirements of an oath shall be deemed complied with by making affirmation in judicial form, and the word "oath" wherever used herein includes such affirmation.

TITLE II.

OF THE STATE ORGANIZATION.

CHAPTER I.

CERTAIN BOUNDARIES, ASSENT TO TERMS OF ADMISSION INTO THE UNION AND CONCESSIONS TO THE UNITED STATES.

ARTICLE 1.—Certain boundaries. Sections..... 2-3
2.—Assent to terms of admission into the Union and concessions to the United States. Sections..... 4-8

ARTICLE 1.

CERTAIN BOUNDARIES.

Ch. 165. Acts 1848. Sec. 2.

2. (2.) Boundary between Florida and Alabama.—The line commencing on the Chattahoochee river near a place known as "Irwin's Mills," and running west to the Perdido, marked throughout by blazes on the trees, and also by mounds of earth thrown upon the line, at distances of one mile, more or less, from each other, and commonly known as the "Mound line" or "Ellicott's line," and by these names distinguished from another line above, running irregularly at different distances not exceeding one and a half miles from the "Mound line" and marked by blazes only, and known as the "Upper line," or "Coffee's line," is the boundary line between the States of Florida and Alabama.

Resolution No. 16, Feb. 8 1861.

3. (3.) Boundary between Florida and Georgia.—The line run and marked by B. F. Whitner, Jr., on the part of Florida, and G. J. Orr, on the part of Georgia, is the permanent boundary line between the States of Georgia and Florida.

Groover v. Coffee, 19 Fla., 61; Coffee v. Groover, 20 Fla., 64; Coffee v. Groover, 123 U. S., 1.

ARTICLE 2.

ASSENT TO TERMS OF ADMISSION INTO THE UNION, AND CONCESSIONS TO THE UNITED STATES.

Ch. 14 1845.

4. (6.) Assent to terms of admission into the Union.—The State of Florida assents as by the statute approved July 25, 1845, to the terms of admission of this State into the

confederacy and union of the United States, and to the provisions of the acts of congress respecting the public lands of the United States in this State.

5. (7.) United States authorized to acquire lands for certain purposes.—The United States are hereby authorized and empowered to purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as they shall seek to occupy and hold as sites on which to erect and maintain forts, magazines, arsenals, dockyards, and other needful buildings, or any of them, as contemplated and provided in the Constitution of the United States; such land to be acquired either by contract with owners, or in the manner hereinafter provided. Ch. 25. Sec. 1, 1845.

6. (8.) Condemnation of land when price not agreed upon.—If the officer or other agent employed by the United States to make such purchase and the owner of the land contemplated to be purchased, as aforesaid, cannot agree for the sale and purchase thereof, the same may be acquired by the United States by condemnation in the same manner as is hereinafter provided for condemnation of lands for other public purposes, and any officer or agent authorized by the United States may institute and conduct such proceedings in their behalf.

7. (9.) Jurisdiction over such lands, how ceded to the United States.—Whenever the United States shall contract for, purchase or acquire any land within the limits of this State for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, it shall be lawful for the Governor of this State, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract or acquisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this State to cede to the United States exclusive jurisdiction over the land so reserved, purchased or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever: Provided, always, That the consent aforesaid is hereby given, and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this State shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far that all process, civil Ch. 25. Sec. 3, 1845.

or criminal, issuing under authority of this State, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person or persons amenable to the same, within the limits and extent of land or lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to their property within said limits and extent, and exemption of the same, and of said land or lands from any taxation under the authority of this State while the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended and not otherwise.

Ch. 630, Acts 1855, Secs. 1 and 2.

8. (10.) Transfer of title to and jurisdiction over land owned by State.—Whenever a tract of land containing not more than four acres shall be selected by an authorized officer or agent of the United States for the bona fide purpose of erecting thereon a lighthouse, beacon, marine hospital or other public work, and the title to the said land shall be held by the State, then on application by the said officer or agent to the Governor of this State, the said executive is hereby authorized to transfer to the United States the title to, and jurisdiction over said land: Provided, always, That the said transfer of title and jurisdiction is to be granted and made, as aforesaid, upon the express condition that this State shall retain a concurrent jurisdiction with the United States, in and over the land or lands so to be transferred, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this State, or any of the courts or judicial officers thereof, may be executed by the proper officer thereof, upon any person or persons amenable to the same, within the limits and extent of the land or lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States, security to their property within said limits or extent. The said lands shall hereafter remain the property of the United States, and be exempt from taxation as long as they shall be needed for said purposes.

CHAPTER II.

POLITICAL DIVISIONS OF THE STATE.

ARTICLE 1.—Counties. Sections 9-53
2.—Senatorial districts. Section..... 54
3.—Congressional districts. Sections..... 55-58

20. (22.) Wakulla.—The district of country included within the following boundaries, to-wit: Beginning at the Gulf; thence north on the range line between ranges two and three until it intersects the north boundary of section thirty-six, township two, range two, south and east; thence due west on that line to the railroad leading from Tallahassee to St. Marks; thence along said railroad two sections north; thence west along the section line to the Ocklockonee river; thence down the river till it strikes the Gulf and thence along the line of the Gulf to the point of commencement, (including islands), shall constitute a county to be called the county of Wakulla.

Mch. 11, 1843, Sec. 1; Ch. 414, Jan. 22, 1851.

21. (23.) Jefferson.—Jefferson county shall be comprehended within the following boundaries: On the west, commencing at the point on the Gulf of Mexico where the line between ranges two and three, east, strikes the coast; thence north on said line to the basis parallel; thence in a direction northeast to the point where the sections twenty-one and twenty-eight and twenty-nine, of township one, range three, north and east, corner; thence in a line north to where it intersects the line between townships one and two of range three, north and east; thence east on the said line to the waters of the Miccosukie; thence up Lake Miccosukie to the south boundary of township three, north, range three east; thence along said township line to the east line of section thirty-four in said township three; thence north along the east line of sections thirty-four, twenty-seven, twenty-two and fifteen in said township to the Georgia line; thence east along said Georgia line to where said line intersects the western boundary line of Madison county; on the north by the State of Georgia; on the east by the county of Madison; on the south by the Gulf of Mexico.

Nov. 23, 1828; Ch. 3176, March 11, 1879; Ch. 3304, Feb. 7, 1881.

22. (24.) Madison.—Madison county shall be comprehended within the following boundaries, to-wit: On the west by Gum Swamp and the Big Aucilla; on the north by the boundary line of the State of Georgia; on the east by the Withlacoochee and Suwannee rivers; and on the south by the counties of Taylor and Lafayette.

Nov. 23, 1828; Feb. 5, 1844; Ch. 806, Dec. 23, 1856.

23. (25.) Taylor.—The county of Taylor shall have the following boundaries, to-wit: Beginning at the mouth of the Aucilla river, and running up said river to the center of township two; thence east to the dividing line between ranges eight and nine; thence south to the line dividing townships two and three; thence along said line due east to where said line is intersected by the line forming the western boundary of Lafayette county; thence down the west-

Ch. 806, Sec. 3, Dec. 23, 1856; Ch. 3766, May 28, 1887.

ern boundary of Lafayette county to the Gulf of Mexico; thence along said Gulf to the mouth of the Aucilla river.

Ch. 806, Sec. 2, Dec. 23, 1856; Ch. 3766, May 28, 1887.

24. (26.) Lafayette.—The county of Lafayette shall have the following boundaries, to-wit: Commencing at the mouth of the Steinhatchee river where it empties into the Gulf, and running thence up the middle of said river to the mouth of Otto creek where it empties into the said river; thence in a northerly direction following the middle of said creek to the range line dividing ranges nine and ten, east; thence following said range line to the line that divides townships two and three, south; thence east along said last mentioned line to where said line crosses the Suwannee river; thence down said river to the Gulf of Mexico; thence along said Gulf from the mouth of the Suwannee river to the mouth of the Steinhatchee river.

Nov. 23, 1828.

25. (27.) Hamilton.—Hamilton county shall be comprehended within the following boundary lines, viz: On the west by the river Withlacoochee; north by the boundary line of the State of Georgia, and south and east by the river Suwannee.

Ch. 895, Sec. 2, Dec. 21, 1858; Ch. 3948, May 30, 1889.

26. (28.) Suwannee. — The boundaries of Suwannee county shall be as follows, to-wit: Beginning at the Suwannee river where the section line dividing sections two and three in township two, south, of range fifteen, east, crosses said river, and running thence south along said section line across townships two, three, four and five in range fifteen, east, to section line dividing sections two and eleven in township six in said range; thence along said section line due east to range line dividing ranges fifteen and sixteen; thence south to Ichetucknee spring; thence down the Ichetucknee to the Santa Fe river to its junction with Suwannee river; thence up the stream of said river to the point of beginning.

Feb. 4, 1832, Ch. 895, Sec. 3, 1858; Ch. 3948, 1889.

27. (29.) Columbia. — The boundaries of Columbia county shall be as follows: Commencing at the mouth of the Ichetucknee river where it enters the Santa Fe river, running thence up said Ichetucknee river to Ichetucknee spring; thence along the western boundary line of Suwannee county to the Suwannee river; thence up said river to the Georgia line; thence along said line to the range line dividing ranges eighteen and nineteen; thence south along said range line to Olustee creek; thence down said creek to the Santa Fe river; thence down said river to the point of beginning.

28. (30.) Bradford.—The boundaries of Bradford county shall be as follows, to-wit: Beginning at the mouth of Olustee creek, thence up the stream of said creek to the center

line of township four, south, of range eighteen, east; thence east along said line to the Alachua trail; thence along the said trail to the range line dividing ranges twenty-two and twenty-three; thence south along said line to Santa Fe lake; thence north along said lake to the Santa Fe river; thence down the said river to the mouth of Olustee creek.

Ch. 895, Sec. 3, Dec. 21, 1858; Ch. 1039, Dec. 22, 1859; Ch. 1185, Sec. 1, Feb. 8, 1861; Ch. 1765, Feb. 3, 1870.

29. (31.) Baker.—Baker county shall comprise all that territory bounded as follows, viz: Commencing on the center line of township four, south, at the range line dividing ranges eighteen and nineteen; thence by said line to the Georgia line; thence along said line to the St. Mary's river; thence down said river to the mouth of Deep creek, on the said river, running up said creek to where the Jacksonville road crosses at Pagit's; thence along the old Alachua trail to the center line of township four; thence west along said line to the beginning.

Ch. 1185, Sec. 1, Feb. 8, 1861; Ch. 895, Sec. 3, Dec. 21, 1858; Mch 15, 1844; Feb. 4, 1832; Ch. 1039, Dec. 22, 1859.

30. (32.) Nassau.—Nassau county shall be bounded on the north by the boundary line of the State of Georgia, on the east by the Atlantic ocean, on the south by the boundary line of Duval county, and on the west by the river St. Mary, Deep creek and the eastern boundary line of Baker county.

Nov. 23, 1828; Mar. 15, 1844; Ch. 895, Sec. 3, Dec. 21, 1858; Ch. 920, Jan. 15, 1859; Ch. 1185, Feb. 8, 1861.

31. (33.) Duval.—Duval county shall be comprehended within a line begining at the mouth of the Nassau river; thence up the main stream of said river to the run of Thomas swamp; thence up the run of said swamp to where it would intersect the prolongation of a line drawn from the southwest corner of township one, north, of range twenty-five, east, to the southwest corner of township two, south, of range twenty-three, east; thence along said last mentioned line in a southwest course to where its extension would intersect the boundary line of Baker county; thence along said line to the dividing line between townships three and four; thence east along said line to the St. Johns river; thence along the said river and boundary line of Clay county to the boundary line of St. Johns county; thence along said boundary line to the Atlantic ocean; thence along the Atlantic ocean to the point of beginning.

Nov. 23, 1828; Ch. 920, Jan. 15, 1859; Ch. 1185, Sec. 1, Feb. 8, 1861; Ch. 2068, Feb. 15, 1875.

32. (34.) Clay.—The boundary lines of Clay county shall be as follows, to-wit: Beginning at the west margin of the channel of the St. Johns river at the dividing line between townships three and four, south of range twenty-six, east; thence west by said line to the eastern line of Baker county; thence southwardly along said eastern line of Baker county and along the range line dividing ranges twenty-two and twenty-three, east, to its intersection with the Bellamy or Federal road, leading from St. Augustine to Tallahassee; thence east along the north margin of said road to

Ch. 1039, Sec. 1; Dec. 22, 1859; Ch. 3469; Sec. 1, Feb. 26, 1883.

its intersection with the south boundary line of township seven, south; thence east along said line to the west margin of the channel of said river; thence down said west margin to the place of beginning.

Ch. 2068, 1875.

33. (35.) St. Johns.—The boundary line of St. Johns county shall commence at a point on the Atlantic coast, at a point where the section line between ten and fifteen, in township three, south, of range twenty-nine, east, intersects the said Atlantic coast; thence running west on the said section line to a point where said section line intersects the range line between ranges twenty-eight and twenty-nine; thence south on said range line to a point where said range line intersects the township line between townships four and five; thence west on the township line between townships four and five, in range twenty-eight, to a point where said township line intersects the range line between ranges twenty-seven and twenty-eight; thence north on said range line to where the same intersects Durbin creek; thence along the south bank of Durbin creek to Julington creek; thence along the center of Julington creek to the mouth thereof; thence due west to the St. Johns river and boundary of Clay county; thence southwardly along the said river and boundaries of Clay and Putnam counties to a point due west of the mouth of Deep creek; thence up the center of Deep creek to the point of intersection of Deep creek with the range line between ranges twenty-seven and twenty-eight; thence south on said range line to Dunn's lake to the center thereof; thence eastwardly along the center of said lake to Haw creek to the north bank of same; thence along said bank of said creek to the east bank of a creek or branch known as the Middle Haw creek; thence northwardly along said east bank of said creek or branch to a point where the township line between townships twelve and thirteen, in range twenty-nine, east, intersects said creek or branch; thence east on said township line, and other joining township lines, to the Atlantic coast; thence northwardly along said Atlantic coast to the place of beginning.

Ch. 280, Sec. 1, Jan. 13, 1849; Ch. 923, Sec. 1, Jan. 15, 1859; Ch. 2068, Feb. 15, 1875; Ch. 3469, Feb. 26, 1883; Ch. 3767, May 28, 1887.

34. (36.) Putnam.—The county of Putnam shall be included within the following boundaries: Commencing at a point on the south side of the Ocklawha river at low water mark, where the range line dividing ranges twenty-four and twenty-five, east, in township eleven, south, crosses said river, and thence running south along said range line to where it intersects the township line dividing townships eleven and twelve, south; thence east along said township line to where it intersects the section line dividing sections two and three, in township twelve, south, of range twenty-

five, east; thence south along said section line and other section lines to the southwest corner of section twenty-three of said township twelve, south, of range twenty-five, east; thence east along the section line dividing sections twenty-three and twenty-six and other section lines to the range line dividing ranges twenty-five and twenty-six, east; thence south along said range line to the southwest corner of section seven, township thirteen, south, range twenty-six, east; thence east along the section line dividing sections seven and eighteen, township thirteen, south, range twenty-six, east; and other section lines to the west shore of Lake George; thence southwardly along the shores of Lake George to the mouth of Sulphur spring; thence to a point on Lake George south of the Spanish grant known as the Acosta grant of land and on the northern boundary of Volusia county; thence in a direct line and along the northern boundary of Volusia county to the most southern part of Dunn's lake; thence along said northern boundary of Volusia county to the north bank of Haw creek and boundary of St. Johns county; thence along the boundary line of St. Johns county, along the center of Dunn's lake eastwardly and northwardly to the range line dividing ranges twenty-seven and twenty-eight, east; thence north on said range line to its intersection with Deep creek; thence down the center of said creek to the center of the St. Johns river; thence down the center of the said river to the intersection of the south boundary line of township seven, south, with said river; thence west along said township line to its intersection with the northern margin of the Bellamy or Federal road leading from St. Augustine to Tallahassee; thence westwardly along the north margin of said road to its intersection with the range line dividing ranges twenty-two and twenty-three, east; thence south on said range line to Orange creek; thence down Orange creek to its mouth, and to the south side of the Ocklawaha river at low water mark; thence down the south side of the Ocklawaha river at low water mark to the place of beginning.

March 10, 1845. Sec. 1; Ch. 3060, Sec. 1, Feb. 6, 1877.

35. (37.) Levy.—The district of country bounded as follows, to-wit: Beginning at the mouth of the Big Withlacoochee river and running in an eastwardly direction up the northern bank of the said river to where the range line dividing ranges seventeen and eighteen, east, strikes said river; thence north along said line to the line dividing townships fourteen and fifteen; thence east along said township line to the middle of township fourteen, south, of range nineteen, east; thence north on a direct line to the line dividing townships eleven and twelve; thence west along said township line until it strikes the range line dividing ranges seventeen and eighteen, east; thence north on said range

line to where it intersects the road leading from Wacahoota to Fort Fanning; thence west along said road to Fort Fanning, so as to include all the settlement of Fort Fanning; thence south down the eastern bank of the Suwannee river to its mouth; thence along the Gulf including all the islands and keys from the mouth of the Suwannee to the mouth of the Big Withlacoochee, the point of beginning, shall constitute a county to be called Levy county.

Nov. 23, 1828, Sec. 3; Feb. 10, 1835, Sec. 1; Ch. 106, Dec. 25, 1846; Ch. 923, Sec. 1, Jan. 15, 1859; Ch. 1765, Feb. 3, 1870.

36. (38.) Alachua.—There shall be and is hereby constituted a county by the name of Alachua, and the said county shall be comprehended within a line corresponding on the west with the Suwannee river; on the north by the Santa Fe river and the Santa Fe lake; on the east by the line dividing ranges twenty-two and twenty-three; on the south by the southern margin of Orange lake and the line dividing townships eleven and twelve to where the said line strikes range line dividing ranges seventeen and eighteen; thence north on said range line to where said range line intersects the road leading from Wacahoota to Fort Fanning; thence west along said road to Fort Fanning.

Ch. 106, Dec. 25, 1846; Ch. 548, Sec. 1, Jan. 8, 1853; Ch. 923, Jan. 15, 1859; Ch. 3060, Sec. 1, Feb. 6, 1877; Ch. 3767, May 8, 1887.

37. (39.) Marion.—The following shall be the boundary lines of Marion county, to-wit: Beginning on the north bank of the Withlachoochee river, at the range line dividing ranges seventeen and eighteen, running north to the township line dividing townships fourteen and fifteen; thence east to the middle of township fourteen, range nineteen, east; thence north to the line dividing townships eleven and twelve; thence east along said line to Orange lake; thence down said lake along its southern margin to Orange creek; thence down said creek to its junction with the Ocklawaha river; thence down the south side of the Ocklawaha river at low water mark to a point on the south side of the Ocklawaha river at low water mark, where the range line dividing ranges twenty-four and twenty-five, east, in township eleven, south, crosses said river, and thence running south along said range line to where it intersects the township line dividing townships eleven and twelve, south; thence east along said township line to where it intersects the section line dividing two and three, in township twelve, south, of range twenty-five, east; thence south along said section line and other section lines to the southwest corner of section twenty-three of said township twelve, south, of range twenty-five, east; thence east along the section line dividing sections twenty-three and twenty-six and other section lines to the range line dividing ranges twenty-five and twenty-six, east; thence south along said range line to the southwest corner of section seven, township thirteen, south, range twenty-six,

east; along the section line dividing sections seven and eighteen, township thirteen, south, range twenty-six, east, and other section lines to the west shore of Lake George; thence southwardly along the shores of Lake George to the mouth of Sulphur spring; thence along the western bank of Lake George until it arrives at a range line dividing ranges twenty-six and twenty-seven; thence down that line to township line dividing townships seventeen and eighteen; thence due west on the said township line to the Withlacoochee river; thence down said last mentioned river to the place of beginning.

38. (40.) Volusia.—The boundary lines of Volusia county are as follows: Commencing on Lake George at a point south of the Spanish grant, known as the Acosta grant of land; thence in a direct line to the most southern part of Dunn's lake; thence to the mouth and north bank of Haw creek; thence along said bank of said creek to the east bank of a creek or branch, known as the Middle Haw creek; thence northwardly along said east bank of said creek or branch to a point where the township line between townships twelve and thirteen, south, in range thirty-nine, east, intersects said creek or branch; thence east along said township lines, and other adjoining township lines, to the Atlantic ocean; thence south along said Atlantic ocean to the line dividing townships nineteen and twenty, running west along said line to the range line between ranges thirty-three and thirty-four; thence south along said line to the township line between townships twenty-one and twenty-two; thence west along said line to the middle of the St. Johns river; thence north down the said St. Johns river to what is known as "Old River," running on the south and west side of what is known on the maps of public surveys as "Huntoon's island", and Lake George to the place of beginning.

Nov. 23, 1828, Sec. 4; Jan. 30, 1845, Sec. 1; Ch. 624, Sec. 1, Dec. 29, 1854; Ch. 925, Sec. 1, Jan. 15, 1859; Ch. 1764, Feb. 14, 1870; Ch. 2068, Feb. 15, 1875; Ch. 3175, March 11, 1879.

39. (41.) Orange.—Orange county shall be bounded as follows: Beginning at the intersection of the range line dividing ranges twenty-six and twenty-seven, east, with the township line dividing townships twenty-four and twenty-five, south, and running thence north to the waters of Lake Apopka; thence north across the waters of Lake Apopka and along the eastern boundary of Lake county to the north shore of Lake Apopka where it is intersected by the range line dividing ranges twenty-six and twenty-seven; thence north along said range line to the township line dividing townships nineteen and twenty; thence east along said township line to Wekiva river; thence north through the center of the Wekiva river to the St. Johns river; thence southerly down the middle of the St. Johns river and what is known as "Old River," running on the south and west side of what is known on the maps of public surveys as "Huntoon's

Nov. 23, 1828; Jan. 30, 1845, Sec. 1; Ch. 1764, Feb. 14, 1870; Ch. 3768, Sec. 1, May 13, 1887; Ch. 3771, Sec. 1, May 27, 1887; Ch. 3944, May 31, 1889.

island," and to the northeast corner of township twenty-five south of range thirty-four, east; thence west on said township line to the place of beginning.

Ch. 3771, Sec. 1, May 27,1887; Ch. 3944, May 31, 1889. As amended by Ch. 4066, Acts 1891.

40. (42.) Lake.—Lake county shall be bounded as follows: Beginning at the intersection of the range line dividing ranges twenty-three and twenty-four with the township line dividing townships twenty-four and twenty-five; thence east along said township line to the range line dividing ranges twenty-four and twenty-five; thence north along said range line to the section line dividing sections thirty and thirty-one, in township twenty-four, south, range twenty-five, east; thence east along the north line of sections thirty-one, thirty-two, thirty-three and thirty-four in said township twenty-four, south, range twenty-five, east, to the northeast corner of said section thirty-four; thence south along the east side of said section thirty-four to the township line dividing townships twenty-four and twenty-five; thence east along said township line to the range line dividing ranges twenty-six and twenty-seven; thence north to the south shore of Lake Apopka; thence north across the waters of Lake Apopka, taking in all islands and peninsulas along the west shore of said lake to the north shore of Lake Apopka where it is intersected by the range line dividing ranges twenty-six and twenty-seven; thence north along said range line to the township line dividing townships nineteen and twenty; thence east along said township line to the Wekiva river; thence north through the center of the said Wekiva river to the St. Johns river; thence in a northerly and northwesterly direction through the center of the St. Johns river to the southwest shore of Lake George; thence north along the west shore of Lake George to the range line dividing ranges twenty-six and twenty-seven; thence south along said range line to the township line dividing townships seventeen and eighteen; thence west along the said township line to the range line dividing ranges twenty-three and twenty-four; thence south along the said range line to the place of beginning; and all of township twenty, south, of range twenty-seven, east, bounded on the south and east by the waters of Lake Beauclaire, shall be and are declared to be a part of the territory of Lake county.

Ch. 548, Sec. 1, Jan. 8, 1853; Ch. 107, Jan. 1, 1847; Ch. 1848, Jan. 30, 1871; Ch. 3771, May 27, 1887; Ch. 3932, May 31, 1889.

41. (43.) Sumter.—Sumter county shall be bounded as follows: Beginning at the intersection of the township line dividing townships seventeen and eighteen, south, with the range line dividing ranges twenty-three and twenty-four, east, and running thence west on said township line to the Withlacoochee river; thence up said river to the junction therewith of the Little Withlacoochee river; thence up said Little Withlacoochee river to the head of the same; thence

east to the range line dividing ranges twenty-two and twenty-three; thence south on said range line to the Withlacoochee river; thence up the main channel of the said river to its intersection by the range line dividing ranges twenty-three and twenty-four; thence north on said range line to the place of beginning.

42. (44.) Citrus.—Citrus county shall be bounded as follows: Commencing at a point on the Withlacoochee river on the section line dividing sections twelve and thirteen, township twenty-one, range twenty, east; thence along said line west to the southwest corner of section nine, township twenty-one, range nineteen, east; thence north along said section line to township line dividing twenty and twenty-one; thence west along said township line to the Gulf of Mexico; thence north along said Gulf to the mouth of the Withlacoochee river, and thence up said river to the point of beginning, including all the lands and islands which said river lines and Gulf may enclose.

Ch. 107, Jan. 1, 1847; Ch. 415, Dec. 24, 1850; Ch. 3772, June 2, 1887.

43. (45.) Hernando. — Hernando county shall be bounded as follows: Commencing at a point on the Withlacoochee river on the section line dividing sections twelve and thirteen, township twenty-one, south, of range twenty, east, and running thence up said river to the junction therewith of the Little Withlachoochee river; thence up said Little Withlachoochee river to the head of the same; thence east to the range line dividing ranges twenty-two and twenty-three; thence south on said range line to the line dividing sections twenty-four and thirteen, township twenty-three, south, of range twenty-two, east; thence west to the line dividing ranges twenty and twenty-one; thence south to the line dividing townships twenty-three and twenty-four; thence west along said line to the Gulf of Mexico; thence northerly along said Gulf, including islands, to the south line of Citrus county; thence along the south line of Citrus county to the place of beginning.

Ch. 107, Jan. 1, 1847; Ch. 415, Dec. 24, 1850; Secs. 1 and 8, Ch. 3772, June 2, 1887.

44. (46.) Pasco.—Pasco county shall be bounded as follows: Commencing at the intersection of the section line between sections thirty-three and thiry-four of township twenty-six, south, of range twenty-two, east, with the township line between townships twenty-six and twenty-seven, south, of range twenty-two, east, and running thence north to the line dividing sections thirty-four and twenty-seven of said township; thence east along said section line to the range line dividing ranges twenty-two and twenty-three; thence north on said range line to the line dividing sections twenty-four and thirteen of township twenty-three, south, of range twenty-two, east; thence west to the line dividing ranges twenty and twenty-one; thence south to the line di-

Ch. 107, Jan. 1, 1847; Ch. 415, Dec. 24, 1850; Ch. 3471, Mar. 5, 1883; Sec. 8, Ch. 3772, June 2, 1887.

viding townships twenty-three and twenty-four; thence west along said line to the Gulf of Mexico; thence southerly along the Gulf coast, including islands, to the north line of Hillsborough county, the township line dividing townships twenty-six and twenty-seven, south; thence east along said line to the place of beginning.

Jan. 25, 1834; Ch. 107, Sec. 2, Jan. 1, 1847; Ch. 1201, Feb. 8, 1861.

45. (47.) Hillsborough.—Hillsborough county shall be bounded as follows: Commencing on the Gulf of Mexico at the line dividing townships twenty-six and twenty-seven, south, running thence east along said line to the line dividing ranges twenty-two and twenty-three, east; thence south along said line to the line dividing townships thirty-two and thirty-three; thence west along said line to the south bank of Tampa bay; thence in a direct line to a point midway between Egmont and Passage Key in the Gulf of Mexico; thence along the coast to the place of beginning.

Ch. 1201, Sec. 2, Feb. 8, 1861; Ch. 1848, Jan. 30, 1871; Ch. 1998, Secs. 3 and 6, Feb. 19, 1874; Ch. 3177, March 5, 1879; Ch. 3471, Mar. 5, 1883; Ch. 3932, May 31, 1889. Sec. 1, Ch. 4066, Acts 1891.

46. (48.) Polk.—The county of Polk shall be and is hereby marked and bounded as follows: Commencing at the point where the range line that divides ranges twenty-two and twenty-three strikes the line that divides townships thirty-two and thirty-three; thence east along said line to where it strikes the Kissimmee river; thence up said river along the western banks of Lake Kissimmee; thence meandering the southern and western banks of said lake to Lake Cypress, and meandering said Lake Cypress to the township line dividing townships twenty-seven and twenty-eight; thence west along said line to range line dividing ranges twenty-eight and twenty-nine; thence in a direct line to a point where the range line dividing ranges twenty-seven and twenty-eight intersects the line dividing townships twenty-five and twenty-six; thence west along said township line to the point where the line dividing ranges twenty-six and twenty-seven intersects the line dividing townships twenty-five and twenty-six; thence north along the range line to the line dividing townships twenty-four and twenty-five; thence west to section line dividing sections thirty-four and thirty-five, township twenty-four, range twenty-five; thence north on said section line to the line dividing sections twenty-seven and thirty-four—same township and range; thence west to range line dividing ranges twenty-four and twenty-five; thence south on said range line to the line dividing townships twenty-four and twenty-five; thence west to the line dividing ranges twenty-three and twenty-four; thence south to the point where said line crosses the Withlacoochee river; thence meandering the north bank of said river to where the line dividing ranges twenty-two and twenty-three crosses the same; thence south along said range line to township line dividing townships twenty-five and twenty-six; thence west along the line dividing said town-

ships twenty-five and twenty-six to section line dividing sections three and four, in township twenty-six, range twenty-two; thence south on said section line to the corner of sections thirty-three and thirty-four, on township line dividing townships twenty-six and twenty-seven, range twenty-two; thence east along said township line to range line dividing ranges twenty-two and twenty-three; thence south to point of beginning.

47. (49.) Osceola.—Osceola county shall be bounded as follows: Commencing at the northwest corner of township twenty-five, south, range twenty-seven, east, running thence east on said township line to the northeast corner of township twenty-five, south, range thirty-four, east; thence south along the range line dividing ranges thirty-four and thirty-five, east, to the line dividing townships thirty-seven and thirty-eight, south; thence west to the Kissimmee river; thence up the middle of said river to Lake Kissimmee; thence meandering the southern and western bank of said lake to Lake Cypress, and meandering said Lake Cypress to the township line dividing townships twenty-seven and twenty-eight; thence west along said line to the range line dividing ranges twenty-eight and twenty-nine; thence in a direct line to a point where the range line dividing ranges twenty-seven and twenty-eight intersects the line dividing townships twenty-five and twenty-six; thence west along the said township line to the point where the dividing line between ranges twenty-six and twenty-seven intersects the line dividing townships twenty-five and twenty-six; thence north along the range line to the point of beginning.

Ch. 3768, Sec. 1, May 12,1887; Ch. 1201, Sec. 2, Feb. 8, 1861; Ch. 1998, Sec. 2, Feb. 19, 1874; Ch. 3177, March 5, 1879; Ch. 3768, May 12, 1887.

48. (50.) Brevard.—Brevard county shall be bounded as follows: Commencing in the middle of the St. Johns river, where the line dividing townships twenty-one and twenty-two intersects the river; thence east along said township line to the range line dividing ranges thirty-three and thirty-four; thence north along said range line to where the same intersects the line dividing townships nineteen and twenty; thence east on said township line to the Atlantic ocean; thence southward along the Atlantic coast, including the waters of the Atlantic ocean within the jurisdiction of the State of Florida, to the township line between townships thirty-seven and thirty-eight; thence west on said township line to the range line dividing ranges thirty-four and thirty-five; thence north on said range line to the northeast corner of township twenty-five, south, of range thirty-four, east, and to the St. Johns river; thence up the middle of said river to the point of beginning.

Ch. 1998, Sec. 2, Feb. 19, 1874; Ch. 3175, Mar. 11, 1879; Ch. 3768, Sec. 1, May 12, 1887.

(See Chapter 5567, Appendix, creating St. Lucie county from part of Brevard.)

Ch. 3770, Sec. 2, May 12, 1887.

49. (51.) Manatee.—Manatee county shall be bounded as follows: Commencing on the south bank of Tampa bay, where the line of townships thirty-two and thirty-three strikes said bay; thence east on said township line to where said township line intersects the line dividing ranges twenty-two and twenty-three; thence south on said line, known as the Washington line, to where said line intersects the line dividing townships thirty-nine and forty; thence west along said line until it intersects the range line dividing ranges twenty and twenty-one; thence south along said line until such line intersects the line dividing townships forty and forty-one; thence west along said line to the Gulf of Mexico; thence northward along the coast of the Gulf, including the waters of the Gulf of Mexico within the jurisdiction of the State of Florida, to a point midway between Egmont and Passage Key; thence in a direct line to the place of beginning.

Ch. 3770, Sec. 3, May 12, 1887.

50. (52.) DeSoto.—DeSoto county shall be bounded as follows: Commencing at a point where the range line that divides ranges twenty-two and twenty-three intersects the township line dividing townships thirty-two and thirty-three; thence east along said township line to the Kissimmee river; thence down the middle of said river to Lake Okeechobee; thence along the western margin of Lake Okeechobee to where the township line dividing townships forty-two and forty-three strikes said lake; thence west along said line to the Gulf of Mexico; thence northward along the coast of the Gulf of Mexico, including the waters of the Gulf within the jurisdiction of the State of Florida, to a point intersected by a line dividing townships forty and forty-one; thence east along said line to the line dividing ranges twenty and twenty-one; thence north on said line to the line dividing townships thirty-nine and forty; thence east on said township line to the line dividing ranges twenty-two and twenty-three; thence north on the said line known as the Washington line to the point of beginning.

Ch. 1998, Sec. 1, Feb. 19, 1874.

51. (53.) Dade.—Dade county shall be bounded as follows: Commencing at the center of the Kissimmee river on the township line between townships thirty-seven and thirty-eight; thence due east on the said township line between said townships thirty-seven and thirty-eight, to the Atlantic ocean; thence southward along the coast, including the waters of the Atlantic ocean and the Gulf stream, within the jurisdiction of the State of Florida, to a point on the reefs of Florida immediately opposite the mouth of Broad creek (a stream separating Cayo Lago from Old Rhodes Key); thence in a direct line through the middle of said stream to Mud Point; thence along the mainland to the range line be-

tween ranges thirty-four and and thirty-five; thence due north on said range line to Lake Okeechobee; thence along the western shore of said lake up to the Kissimmee river, and up the middle of said river to the place of beginning.

52. (54.) Lee.—Lee county shall be bounded as follows: Beginning where the township line between townships forty-two and forty-three, south, strikes Lake Okeechobee, and running thence west on said township line to the Gulf of Mexico; thence southwardly along said Gulf, including all islands and the waters of said Gulf within the jurisdiction of the State of Florida, to the township line which separates townships fifty-three and fifty-four, south; thence east on said township line to the range line between ranges thirty-four and thirty-five, east; thence north on said range line to Lake Okeechobee; thence along said lake to the place of beginning.

Ch. 1998, Secs. 1 and 5, Feb. 19, 1874; Ch. 3769, Sec. 1, May 13, 1887; Ch. 3770, Secs. 2 and 3, May 19, 1887.

53. (55.) Monroe.—So much of the State of Florida as is situated south of the county of Lee and west or south of the county of Dade, shall constitute the county of Monroe.

Ch. 1998, Secs. 1 and 5, Feb. 19, 1874; Ch. 3769, May 13, 1887.

ARTICLE 2.

SENATORIAL DISTRICTS.

54. (56.) Divisions of State into senatorial districts. There shall be thirty-two senatorial districts which shall be represented each by one senator, and designated by numbers, and be composed each of the counties mentioned and named after the several numbers as follows: The First district, Santa Rosa; Second, Escambia; Third, Walton and Holmes; Fourth, Jackson; Fifth, Liberty, Franklin and Wakulla; Sixth, Gadsden; Seventh, Polk; Eighth, Leon; Ninth, Hernando, Pasco and Citrus; Tenth, Madison; Eleventh, Hillsborough; Twelfth, Taylor and Lafayette; Thirteenth, Dade and Brevard; Fourteenth, Columbia; Fifteenth Bradford; Sixteenth, Nassau; Seventeenth, Suwannee; Eighteenth, Duval; Nineteenth Orange and Osceola; Twentieth Marion and Sumter; Twenty-first, Levy; Twenty-second, Jefferson; Twenty-third, Lake; Twenty-fourth, Monroe and Lee; Twenty-fifth, Washington and Calhoun; Twenty-sixth, Putnam; Twenty-seventh, Manatee and DeSoto; Twenty-eighth, Volusia; Twenty-ninth, Clay and Baker; Thirtieth, Hamilton; Thirty-first, St. Johns; Thirty-second, Alachua.

Ch. 3703, Jan. 7, 1887.

ARTICLE 3.

CONGRESSIONAL DISTRICTS.

Ch. 4913, Acts 1901, Sec. 1.

55. First district.—The counties of Taylor, Lafayette, Levy, Marion, Citrus, Sumter, Hernando, Pasco, Hillsborough, Polk, Manatee, DeSoto, Lee, Monroe and Lake shall form and constitute the First Congressional district.

Ib., Sec. 2.

56. Second district.—The counties of Hamilton, Suwannee, Columbia, Baker, Bradford, Nassau, Duval, Clay, Putnam, St. Johns, Volusia, Osceola, Orange, Brevard, Dade and Alachua shall form and constitute the Second Congressional district.

Ib., Sec. 3.

57. Third district.—The counties of Escambia, Santa Rosa, Walton, Holmes, Washington, Jackson, Calhoun, Franklin, Liberty, Gadsden, Leon, Wakulla, Jefferson and Madison shall form and constitute the Third Congressional district.

Ib., Sec. 4.

58. Election of representatives to Congress.—The district hereinbefore named shall constitute and form the congressional districts of the State of Florida, and a representative to the Congress of the United States shall be selected in and for each of said congressional districts, as now provided by law.

CHAPTER III.

OF THE LAWS.

ARTICLE 1.—Common law in force. Section.....59-61
2.—Of repealing statutes. Section..... 62

ARTICLE 1.

COMMON LAW IN FORCE.

Nov. 6, 1829, Sec. 1.

59. (59.) Common law and certain statutes declared in force.—The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, be, and the same are hereby declared to be of force in this State: Provided, The said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this State.

See Hart v. Bostwick, 14 Fla., 173.

60. (60.) Certain laws abrogated saving vested rights. All the laws and ordinances in force in this State to the 22nd day of July, 1822, be, and the same are hereby repealed: Provided, nevertheless, That all causes of action arising under, and founded on any of said laws and ordinances, shall be judicially determined according to the principles and rules of said laws and ordinances, anything in these statutes to the contrary notwithstanding. Ib., Sec. 2.

61. (61.) Certain proceedings valid.—All proceedings which have heretofore been had and done in the different courts of this State in accordance with the provisions of the foregoing sections of this article shall be, and they are hereby declared to be good and valid. Ib., Sec. 3.

ARTICLE 2.

OF REPEALING STATUTES.

62. (62.) Repealed statute not revived by implication. No statute of this State which has been repealed shall ever be revived by implication; that is to say, if a statute be passed repealing a former statute, and a third statute be passed repealing the second, the repeal of the second statute shall in no case be construed to revive the first, unless there be express words in the said third statute for this purpose. Nov. 2, 1829.

TITLE III.

OF THE LEGISLATIVE AND EXECUTIVE DEPARTMENTS.

CHAPTER I.

OF THE LEGISLATIVE DEPARTMENT.

ARTICLE 1.—Of the Senate. Sections.....63-64
2.—Of the House of Representatives. Section..... 65
3.—Of uniformity of legislation. Section..... 66
4.—Of local and special legislation. Sections.....67-68

ARTICLE 1.

OF THE SENATE.

63. (63, 64.) One senator for each district.—Each senatorial district shall be represented by one senator, who shall Ch. 3703, Secs. 2 and 3.

be elected as provided by law. All senators except when vacancies are to be filled, shall be elected for four years.

64. When senators elected.—See Section 172.

ARTICLE 2.

OF THE HOUSE OF REPRESENTATIVES.

Ch. 3703, 1887, Sec. 4.

65. (65.) Apportionment of members of House of Representatives.—There shall be sixty-eight members of the House of Representatives, to be apportioned among the several counties as follows:

Alachua shall have two.
Baker shall have one.
Bradford shall have two.
Brevard shall have one.
Calhoun shall have one.
Clay shall have one.
Columbia shall have two.
Dade shall have one.
DeSoto shall have one.
Duval shall have two.
Escambia shall have two.
Franklin shall have one.
Gadsden shall have two.
Hamilton shall have two.
Hernando shall have one.
Hillsborough shall have two.
Holmes shall have one.
Jackson shall have two.
Jefferson shall have two.
Lafayette shall have one.
Lake shall have two.
Lee shall have one.
Leon shall have two.
Levy shall have one.
Liberty shall have one.
Madison shall have two.
Manatee shall have one.
Marion shall have two.
Monroe shall have two.
Nassau shall have two.
Orange shall have two.
Osceola shall have one.
Polk shall have two.

Putnam shall have two.
St. Johns shall have two.
Santa Rosa shall have two.
Sumter shall have one.
Suwannee shall have two.
Taylor shall have one.
Volusia shall have two.
Wakulla shall have one.
Walton shall have one.
Washington shall have one.
Pasco shall have one.
Citrus shall have one.

When members of House of Representatives elected.—See Section 172.

ARTICLE 3.

OF UNIFORMITY OF LEGISLATION.

66. Commissioners for the promotion of uniformity of legislation.—The Governor shall appoint, by and with the consent of the Senate, three commissioners by the name and style of commissioners for the promotion of uniformity of legislation in the United States. It shall be the duty of the said board to examine the subject, of marriage and divorce, insolvency, form of notarial certificates, descent and distribution of property, acknowledgment of deeds, execution and probate of wills, and other subjects; to ascertain the best means to effect assimilation and uniformity in the laws of the State, and to co-operate and advise with similar commissions appointed for a like purpose in other States of the Union; and, if wise and practicable, to draft uniform laws to be submitted for the approval and adoption of the several States, and to devise and recommend such other course of action as shall best accomplish the purposes of this act. Said commissioners shall serve for four years and without compensation. Ch. 4447, Acts 1895, Sec. 1.

ARTICLE 4.

OF LOCAL AND SPECIAL LEGISLATION.

67. (66.) Notice of local or special legislation.—The notice required to obtain special or local legislation shall be by publishing the same in some newspaper published in the county, or counties, where the person, matter or thing to be Ch. 3708, Act 1887, Sec. 1.

affected by such legislation shall reside or be situated, at least once each week for at least sixty days, or by posting the same at not less than three public places in said county or counties, one of which shall be at the court house door of said county or counties, and one in the locality or localities where such person may reside, or matter or thing be situated, for the time aforesaid; and said notice shall contain a short statement of the object desired by said special or local legislation.

Ib., Sec. 2.

68. (67.) Evidence of notice.—The evidence required shall be the affidavit of the publisher of said newspaper appended to a copy of said notice that the same has been published the time aforesaid, or if by posters, the affidavit of the person or one of the persons so posting the same, appended to a copy of said notice, that the same has been published, or posted for the said time and in the manner required; and said affidavit shall be made before some officer authorized to administer oaths.

CHAPTER II.

OF THE EXECUTIVE DEPARTMENT.

ARTICLE 1.—Of the Governor. Sections..... 69-73
2.—Of the Secretary of State. Sections..... 74-86
3.—Of the Attorney General. Sections..... 87-96
4.—Of the Comptroller. Sections..... 97-122
5.—Of the Treasurer. Sections.....123-140
6.—Of the Superintendent of Public Instruction. Sections...141-145
7.—Of the Commissioner of Agriculture. Sections.....146-164
8.—Of the State Auditor. Sections.....165-169

ARTICLE 1.

OF THE GOVERNOR.

Ch. 1660, Acts 1868.

69. (68.) Governor authorized to employ persons to protect life, liberty and property.—The Governor is hereby authorized and empowered to employ as many persons as he in his discretion may deem necessary to procure and secure protection to life, liberty and property of the inhabitants of the State of Florida, also to protect the property of the State of Florida.

Ch. 1745, Acts 1870, Sec. 1.

70. (69.) Governor may preserve peace and order by military force.—The Governor shall have power in cases of insurrection or rebellion, violence, disorder or insecurity of life, liberty and property, to support and preserve the public peace and order by the military force of the State.

71. (70.) Lights and fuel to be purchased under the authority of Governor.—All lights and fuel for the use of the executive office and of the supreme court shall be, from time to time, purchased under the authority of the Governor, to be paid for out of the contingent fund, and to be deposited at the capitol, in the charge of such officer of the State as the Governor may direct. Ch. 219, Acts 1849.

72. (71.) Governor's private secretary.—The Governor of this State may appoint and commission a fit and proper person to hold his office during the pleasure of the Governor, as private secretary of the Governor, and as clerk for the executive department, and who shall attend daily, during office hours, at the capitol, and perform such duties in the office of the Governor as he may be directed by the Governor to perform. Ch. 3, Acts 1845, Sec. 3.

73. (72.) Private secretary to copy laws.—It shall be the duty of the private secretary of the Governor, under the supervision of the Secretary of State, to copy for publication the laws passed at each session of the Legislature. Ch. 3053, Acts 1877, Sec. 2.

For Salary of the Governor. See Ch. 5473, Appendix.

ARTICLE 2.

OF THE SECRETARY OF STATE.

74. (73.) Residence, office and duties.—The Secretary of State shall reside at the seat of Government of this State, and shall hold his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State; shall have the custody and care of the Constitution and great seal of this State, and of the original statutes thereof, and of the resolutions of the Legislature, and of all the official correspondence of the Governor of the State; and he shall keep a register of all official letters, orders, communications and documents received by the Governor or by himself, and file and preserve the same in his said office, and shall make and keep an index thereof, and shall record all the official letters, orders, messages and other official acts and proceedings of the Governor in a book to be provided therefor, in regular chronological order, and number the same as recorded, and make and keep an index of such record; and that to enable the said Secretary of State so to do, it shall be the duty of the Governor, before the issuing of any order, or transmission of any official letter, communication, or document from the executive office, or promulgation of any official act or Ch. 1, Sec. 1, Acts 1845; Ch. 1845, Acts 1871.

proceeding, (except military orders,) to deliver the same, or a copy thereof, to the Secretary of State, to be recorded as aforesaid, and also deliver to said Secretary of State all official letters and communications to him, forthwith on receipt thereof.

Ch. 1, Sec. 3, Acts 1845.

75. (74.) To have custody of certain territorial papers, etc.—The Secretary of State shall have the custody, keeping and care of all books, papers, files, records and documents belonging to the offices of Governor and Secretary of the territory of Florida, and of the statutes of the territory, and of the books, papers, journals and documents of the legislative council of the territory; and the Secretary of the State shall, in addition to the duties prescribed by the Constitution, perform all the duties heretofore appertaining to the office of the secretary of the territory not inconsistent with the Constitution of this State.

Ib., Sec. 4.

76. (75.) Seal.—The great seal of this State shall also be the seal of the office of the Secretary of State, and the Secretary of State may certify under said seal, copies of any statute, law, resolution, record, paper, letter or document, by law placed in his custody, keeping and care, and such certified copy shall have the same force and effect as evidence, as the original would have.

Ch. 1822, Sec. 1, Acts 1870, Const. 1885, Art. 4, Sec. 21.

77. (76.) To have charge of capitol and appurtenances. The Secretary of State shall have full charge of the capitol buildings, grounds, appurtenances, fixtures and property belonging thereto, to be used alone for State purposes.

Ch. 1822, Sec. 2, Acts 1870 and Const. 1885, Art. 4, Secs. 17 and 21.

78. (77.) Repairs and assignments of rooms.—Under the direction of the board of commissioners of State institutions, it shall be the duty of the Secretary of State to make all alterations and repairs of the capitol which may be provided for by law, to assign their respective rooms to State officers who are required to keep their offices in the capitol, and to provide committee rooms for the Legislature, not less than four in number, being two for the Senate and two for the House of Representatives.

Ch. 1904, Sec. 1, Acts 1872.

79. (78.) Acts and papers of the Legislature to be deposited with the Secretary of State.—All original acts and resolutions passed by the Legislature, and all other original papers acted upon thereby, shall, immediately upon the adjournment thereof, be deposited with and preserved in the office of the Secretary of State, by whom they shall be properly arranged, classified and filed.

Ch. 1936, Sec. 1, Acts 1873.

80. (79.) Not to issue commission until tax therefor paid. The Secretary of State is hereby prohibited from affixing his signature and the seal of the State to the commission of any

public officer until he shall have received and filed in his office the receipt of the State Treasurer, countersigned by the Comptroller, for the amount of the tax required to be paid by such public officer for such commission.

81. (80.) Fees.—The fees of the Secretary of State shall be as follows: For search of papers, or records, twenty-five cents; certificates, with seal, one dollar, to be paid into the State treasury on account of general revenue, and also one dollar to be paid to the Secretary of State for his fees; for copying, furnishing statistical information, and for copying any document not herein provided for, twenty cents for the first hundred words, or fraction thereof, and ten cents for every succeeding one hundred words: Provided, That all fees arising under this section from certificates of election, or appointment to office, and from commissions to officers, shall be paid to the State Treasurer before the certificate, appointment or commission issues, by the party from whom due; and the amount thus realized shall constitute a part of the fund appropriated for the maintenance of lunatics.

Ch. 2089, Sec. 1, Acts 1877.

82. (81.) Assistant secretary.—The Secretary of State is authorized and empowered to appoint an assistant secretary of State who shall be empowered and authorized to discharge all the official duties of the Secretary of State whenever he may be absent from the capital of the State.

Ch. 1285, Sec. 1 and 2, Acts 1861.

The assistant secretary of State shall not receive compenpensation for his services from the treasury of the State, but shall look to the Secretary of State alone for his compensation.

83. (82.) Disposition of books and maps.—It shall be the duty of the Secretary of State to cause all the books and maps belonging to the State to be collected together and be disposed of as follows: One copy of each book or map to be placed in a room on the same story with the legislative rooms, in suitable cases and properly arranged, and labeled and numbered, which collection shall be called "The Legislative Library," and shall be for the use of the members of the general assembly during the sessions thereof; and when there are two copies of any one book or map, one copy thereof shall be placed in the office of the Secretary of State, and arranged, labeled and numbered as aforesaid, and which collection shall be called "Executive Library," and shall be for the use of the executive officers of this State; and when there are three copies of any book or map, one copy thereof shall be placed in the room assigned to the Supreme Court of this State, and arranged, labeled and numbered as aforesaid, and which collection shall be called "The State Judicial Library," and shall be for the use of the judicial officers of this State; and all books or maps hereafter received shall be disposed of

Ch. 13, Sec. 1, Acts 1845.

in like manner; and where there are more than three copies of any book or map, such additional copies as may be deemed expedient may be placed in each library, and the residue placed in the keeping of the State Treasurer of the State, to be disposed of by law.

Ch. 616, Sec. 1, Acts 1855.

84. (83.) Secretary of State ex-officio State Librarian. The libraries known as the executive and legislative libraries are hereby placed under the care, management and superintendence of the Secretary of State, who is hereby declared ex-officio Librarian of the State of Florida.

Ib., Sec. 3.

85. (84.) Catalogue and exchange of books.—The said librarian shall make a correct and full catalogue of the books in the several offices under his charge, and when there are duplicate copies of any one book, work or map, in any of the aforesaid libraries, he is permitted and hereby authorized to exchange the same with any person or persons, state, or states, for any other different work, book or map with a view to the improvement and increase of the libraries aforesaid.

Ch. 5179, Acts 1903, Sec. 1.

86. Salary.—The salary of the Secretary of State shall be at the rate of twenty-five hundred dollars ($2500.00) per annum.

Mandamus will be to compel the Secretary of State to seal and countersign the commission of one appointed United States Senator by the Governor.—State ex rel. v. Crawford, 28 Fla., 441, 10 So. Rep. 118.

ARTICLE 3.

OF THE ATTORNEY GENERAL.

Ch. 2, Sec. 2, Acts 1845 and Ch. 1845, Acts 1871.

87. (85.) Residence, office and duties of Attorney-General.—The Attorney-General shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of this State; he shall appear in and attend to such suits or prosecutions in any other of the courts of this State, or in any courts of any other state, or of the United

States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof.

88. (85a.) Appointment of person to act in case of disability of Attorney-General.—In case of the disability of the Attorney-General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or ttorney-General of this State may appoint another person to perform such duty in his stead. Ch. 2, Sec. 3, Acts 1845.

89. (86.) To prepare forms. — The Attorney-General shall attend all sessions of the Legislature, and upon the passage of any act shall draft and submit to the Legislature, at the same session, all necessary forms of proceedings under such laws, which, when approved by the Legislature, shall be published therewith. Ib., Sec. 4.

90. (87.) To index statutes and journals and direct publication.—The Attorney-General shall prepare marginal abstracts to the several sections and a general alphabetical index to the entire acts and resolutions of each session of the Legislature as soon as practicable after the adjournment thereof, and also an index to each of the journals of the two branches of the Legislature. Such acts and resolutions and forms of proceedings thereunder prepared by the Attorney-General shall be published under his direction. Ch. 1904, Sec. 2, Acts 1872, and Ch. 3699, Sec. 6, Acts 1887.

91. (88.) To report on laws.—It shall be the duty of the Attorney-General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the courts thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the Legislature by the Governor with his first message. Ch. 2, Sec. 5, Acts 1845.

92. (89.) Not to receive fee for defending offender.—It shall be a misdemeanor in office for the Attorney-General to take or receive any fee for defending any supposed offender in any of the courts. Ib., Sec. 6.

93. (90.) To have superintendence and direction of State attorneys.—The Attorney-General shall exercise a general

Ch. 2098, Sec. 1, Feb. 27, 1817.

superintendence and direction over the several State attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State attorneys, shall give them his opinion upon any question of law.

Ib., Sec. 3.

94. (91.) To prescribe regulations as to the reports of State attorneys.—The Attorney-General shall prescribe the time and manner in which regular quarterly reports shall be made to him by State attorneys, and it shall be their duty to comply with his instructions in this respect.

Ch. 3264, Acts 1881.

95. (92.) To receive Supreme Court reports for office. The clerk of the Supreme Court is hereby directed to deliver to the Attorney-General a copy of each volume or part of volume of the decisions of the Supreme Court of Florida, which may be in the care or custody of said clerk, and which the Attorney-General's office may be without, and take the Attorney-General's receipt for the same. The Attorney-General shall keep the same in his office at the capitol, and each retiring Attorney-General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office: Provided, That this shall not authorize the taking away of any book belonging to the supreme court library, kept for the use of said court.

Ch. 5179, Acts 1903, Sec. 1.

96. Salary.—The salary of the Attorney-General shall be at the rate of twenty-five hundred ($2500.00) dollars per annum.

ARTICLE 4.

THE COMPTROLLER.

Ch. 8, Sec. 1, Acts 1845.

97. (93.) The Comptroller to give bond.—The Comptroller of the State shall, before he enters upon the discharge of the duties of his office, give bond with at least four good and sufficient securities, payable to the State of Florida, in the penal sum of five thousand dollars, conditioned for the faithful discharge of all the duties of the said office; and said bond, before accepted shall be approved by the Attorney-General and also by the Governor of the State, and filed and recorded when accepted in the office of the Secretary of State.

Ib., Sec. 2, and Ch. 1845, Acts 1871.

98. (94.) Place of residence and office. — The Comptroller shall reside at the seat of government of this State, and shall hold his office in a room in the capitol.

99. (95.) To audit claims against the State.—It shall be the duty of the Comptroller of this State to examine, audit, and settle all accounts, claims and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and to issue his warrant to the Treasurer directing him to pay out of the State treasury such amount as shall be allowed by said Comptroller thereon. Ch. 146, Sec. 1, Acts 1848.

Comptroller is not authorized to retain money of territory for his own debt.—Bemis v. State, 2 Fla., 12. Held, that claim of the sheriff for the costs in case where defendant was acquitted of assault and battery could not be enforced against the State by mandamus to Comptroller.—Towle v. State ex rel. 3 Fla., 202. A claim must be audited by Comptroller before it can be offset against the State.—Frier v. State, 11 Fla., 300. Where salary of officer is fixed and appropriation made therefor by law, drawing warrant by Comptroller may be enforced by mandamus.—State ex rel. Weeks v. Gamble, 13 Fla., 1. The statutes authorizing the payment of costs by the Treasurer on the warrant of the Comptroller regulate the liability of the State.—State v. Rushing, 17 Fla., 223. Cost cannot go beyond general judgment that the costs in a criminal case be paid by the State, the ascertainment of the costs and payment thereof must be as statutes direct.—Buckman v. Alexander, 24 Fla., 46, (3 So. Rep. 817.) Comptroller is right in refusing to allow officer amount for salary appropriated by the Legislature in excess of that fixed by Constitution.—State ex rel. v. Barnes, 25 Fla., 75, (5 So. Rep., 698). May instruct collector but cannot give collectors any power that the law does not give them.—State ex rel. Attorney-General v. Johnson, 30 Fla., 499. (11 So. Rep. 855.) Mandamus to Comptroller to honor requisition of clerk of criminal court for money necessary to pay witnesses and jurors. State v. Croom, 46 Fla., — (37 So. Rep. 303.)

100. (96.) To audit and adjust accounts of officers and those indebted to the State.—It shall be the duty of the Comptroller of this State to examine, audit, adjust and settle the accounts of all the officers of this State, and any other person or persons, or corporations, in any wise intrusted with, or who may have received any property, funds or moneys of this State, or who may be in any wise indebted or accountable to this State for any property, funds or moneys, and require such officer, person or persons, or corporation to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this State, or to such officer or agent of the State as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such person or persons, or corporation, according to law. Ch. 8, Sec. 4, Acts 1845.

101. (97.) May examine under oath parties and privies to accounts.—The Comptroller of this State may demand and require full answers on oath from any and every person, party or privy to any account, claim or demand against or by the State, such as it may be his official duty to examine into, and which answers he may require to be in writing and to be sworn to before himself or before any judicial officer, or jus- Ib., Sec. 5.

tice of the peace, or clerk of any court of the State, so as to enable such Comptroller to decide as to the justice or legality of such account, claim or demand.

Ch. 146, Sec. 2, Acts 1848.

102. (98.) Disallowed items and accounts.—The said Comptroller shall erase from any original account all items disallowed by him; and when he shall reject the whole of any account he shall write across the face of it the word "disallowed," and the date, and file the same in his office or deliver it to the claimant.

Ch. 8, Sec. —, Acts 1845 and Ch. 146, Sec. 1, Acts 1848.

103. (99.) Warrants.—Every warrant issued by the Comptroller of this State shall be numbered in chronological order in each fiscal year, commencing at number one; and every warrant shall refer to the Comptroller's report by the number thereof, which report shall also be numbered, as aforesaid, and said warrant shall also state the name of the original creditor and the different transferees, and refer to the particular act or resolution, and section thereof, on which it is issued, and the head of expenditure to which the same is chargeable, and the amount allowed shall be stated in words at length; and no warrant shall ever be issued until the same has been authorized by act or resolution of the Legislature. And the said Comptroller shall record every warrant in his office.

Ch. 351, Acts 1851.

104. (100.) Accounts, etc., on which warrants drawn, to be filed.—All accounts, vouchers and evidence, upon which warrants have heretofore been, or shall hereafter be drawn upon the treasury by the Comptroller shall be filed and deposited in the office of said Comptroller.

Ch. 1567, Acts 1866, Sec. 1.

105. (101.) Application for warrants for salaries.—All public officers who are entitled to salaries in this State, shall make their application for warrants in writing, stating for what terms and the amount they claim, which written application shall be filed by the Comptroller as vouchers for the warrants issued thereupon.

Ch. 146, Sec. 3, Acts 1848.

106. (102.) To keep certain record books.—The Comptroller shall keep in his office a book in which he shall enter a synopsis or abstract of all accounts and claims presented, which abstract shall contain the names of the original claimant and transferees, the date and amount claimed, a minute of the evidence, and of his decision thereon, and if allowed, a reference to the number of the warrant issued thereon. The Comptroller shall also keep in his office a book in which shall be kept an abstract of all official letters, documents and communications received by him and of the disposition thereof; and a book in which to record all official letters or communications made by him.

formance of the duties of treasurer of each board or fund of which he is or may be made by law ex-officio the treasurer.

124. (119.) Moneys paid on warrants.—The Treasurer shall pay all warrants on the treasury drawn by the Comptroller and countersigned by the Governor, and no moneys shall be paid out of the treasury except on such warrant. Ib., Sec. 5, Const. 1885, Art. 4, Sec. 24.

125. (120.) Residence and office.—The Treasurer shall reside at the seat of government of this State, and shall keep his office in a room in the capitol. Said office shall be open every day, Sundays, holidays and public festivals excepted, from 10 o'clock a. m. to 3 o'clock p. m. Ch. 9, Sec. 12, July 26, 1845; Ch. 1845, Jan. 27, 1871.

126. (121.) To publish abstract general revenue account each year.—It shall be the duty of the Treasurer of this State to publish in a newspaper at the capital during the first week in January of each year, an abstract of general revenue account showing the aggregate amount of receipts from each and all sources for the general expenses of the government, and the aggregate amount of the disbursements for each appropriation on the same account; also the aggregate disbursements on account of the interest on the public debt, during the preceding year, with a balance sheet showing the condition of all the accounts and funds at the end of the fiscal year. Ch. 3563, Sec. 1, Acts 1885.

127. (122.) Annual report to Governor.—It shall be the duty of the Treasurer to make a report in detail to the Governor on the first day of January of each year of the transactions of his office for the preceding fiscal year, embracing an itemized statement of the receipts and payments on account of each of the several funds of which he has the care and custody, in addition to the statements required in Section 126. Ib., Sec. 2.

128. (123.) Examination by and monthly statements to the Governor.—The office of the Treasurer of this State, and the books, files, documents, records and papers thereof, shall always be subject to the examination of the Governor of the State, or any person or persons he may authorize to examine the same. The Treasurer shall exhibit to the Governor on or before the tenth day of each month, a trial balance sheet from his books and a statement of all the credits, moneys or effects on hand on the day for which said trial balance sheet is made, and said statement accompanying said trial balance sheet shall particularly describe the exact character of funds or credits, and shall state in detail the amount in currency, coin, drafts, checks, orders, receipts, bonds, coupons or other credit memoranda which he may have representing cash and not yet entered upon the books of his Ib., Sec. 3, Ch. 4588, Sec. 1, Acts 1897.

office, and such statement shall be certified and signed by the Treasurer officially.

Ch. 3563, Acts 1885, Sec. 4.

129. (124.) To keep record of warrants and coupons paid.—It shall be the duty of the Treasurer to keep a record of the warrants and coupons which he pays, which record shall contain a description of the same and date of payment and to whom such warrants were paid.

Ib., Sec. 5.

130. (125.) To turn over to the Comptroller quarterly all vouchers paid.—It shall be the duty of the Treasurer to turn over to the Comptroller on the first days of January, April, July and October of each year, all vouchers for payments made by him during the previous quarter, and the Comptroller shall credit his account with the amount thereof, giving him a certificate of the date and amount of such credit.

Ch. 9, Sec. 6, Acts 1845.

131. (126.) Exhibit to Legislature.—The Treasurer shall exhibit to the Legislature at its regular sessions, an exact statement of the balance in the treasury to the credit of the people of the State, with a summary of the receipts and payments of the treasury during the preceding two years.

Ch. 4586, Acts 1897, Sec. 1.

132. May deposit money in banks of the State.—The Governor, Comptroller, and Treasurer are hereby authorized to deposit, subject to call, the moneys of the State in such banks in the State as will offer the best inducements as to interest and security.

Ib., Sec. 2.

133. Security to be given.—The security to be given by such banks as may be designated under the preceding section shall consist only of bonds of the United States, and the bonds of the several States, and county and municipal bonds issued by any one of the counties or cities of the value thereof, as may be agreed to by the Governor, Comptroller and Treasurer.

Ib., Sec. 3.

134. May sell bonds.—The Governor, Comptroller and Treasurer are hereby authorized to sell any or all of the bonds that may be deposited in the State Treasurer's office as collateral security for the deposit of any State money, at public or private sale, whenever there shall be a failure or refusal on the part of the bank depositing such securities to pay any check drawn by the State Treasurer on such bank.

Ibid.

135. Notice of sale to be given.—Notice of the sale of bonds under the preceding section shall be given for thirty days in a newspaper published in the city of Tallahassee, and when a sale of bonds is made by the Governor, Comptroller and Treasurer, either at public or private sale, under said section, the absolute ownership of such bonds shall vest in the purchaser or purchasers upon the payment of the

purchase money to the State Treasurer. Should there be any surplus after paying the amount due the State, and expenses of sale, it shall be paid over to the bank making the deposit.

136. Interest on money deposited to be paid quarterly to Treasurer.—Interest on the State moneys deposited in banks under Section 132 shall be payable to the State Treasurer quarterly on the first days of January, April, July and October, and such interest money shall be credited on account of general revenue. Ib., Sec. 4.

137. Treasurer not to deposit money without the consent of Governor and Comptroller.—It shall be unlawful for the State Treasurer to deposit or keep any money not deposited in accordance with Section 132 in any bank, without the consent of the Governor and Comptroller. Ib., Sec. 5.

138. (130.) Not to issue evidences of indebtedness.—It shall not be lawful for the Treasurer of this State to issue any treasury certificates, or any other evidences of indebtedness, for any purpose whatever, and he is hereby prohibited from issuing the same. Ch. 1737, Sec. 2, Acts 1870.

139. (131.) Surplus fund.—The State Treasurer shall open and keep permanently an account under the head of "Surplus Fund," to which shall be transferred, at the end of every fiscal year, all unexpended balances of appropriations made for said fiscal year, and shall, at each session of the Legislature, exhibit the same in his report. Ch. 515, Sec. 4, Acts 1853.

140. Salary.—The salary of the State Treasurer shall be at the rate of twenty-five hundred ($2500.00) dollars per annum. Ch. 5179, Acts 1903, Sec. 1.

ARTICLE 6.

THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

141. (132.) To have charge of all matters pertaining to public schools.—The State Superintendent of Public Instruction shall have the oversight, charge and management of all matters pertaining to public schools, school buildings and grounds. Ch. 3872, Sec. 11, Acts 1889.

142. (133.) Duties.—It is his duty and he is hereby empowered: Ib., Sec. 12.

First.—To prepare and cause to be printed and distributed gratuitously to boards of public instruction, and other officers and teachers, as many copies of the school laws, and

such forms, instruments, instructions, regulations and decisions as he may judge necessary for their use.

Second.—To call conventions of county superintendents of public instruction, and other officers, for obtaining and imparting information on the practical workings of the school system, and the means of promoting its efficiency and usefulness.

Third.—To assemble teachers in institutes and employ competent instructors to impart information on improved methods of teaching and conducting schools, and other relevant matters.

Fourth.—To apportion the interest on the common school fund and the fund raised by the one mill State tax authorized by Section 6 of Article XII, of the Constitution, among the several counties of the State in proportion to the average attendance upon schools in the said counties respectively of children residing therein between the ages of six (6) and twenty-one (21) years.

Fifth.—To make such apportionments as may in his judgment be right and just, when the census and returns on which the apportionments should be made are manifestly defective or have not been received by him.

Sixth.—To entertain and decide upon appeals and questions arising under the law, or refer such to the board of education for decision.

Seventh.—To prescribe rules and regulations for the management of the department of public instruction.

Eighth.—He shall prepare the questions for county examinations and distribute same to county superintendents; hold written examinations for and issue State certificates; may grant life certificates as provided by law; and may order county examinations on other days than those prescribed by law.

Ninth.—To file and preserve certified copies of the monthly lists of persons who have paid their poll taxes, in his office as a part of the public records, and furnish copies thereof when requested by citizens of this State.

Ch. 4666, Acts 1899, Sec. 2.

143. (134.) Seal.—He shall have a seal for his office, with which in connection with his own signature, to authenticate copies of decisions, acts, or documents, which copies so authenticated shall be of the same force as the originals.

Ch. 1686, Acts 1869, Sec. 12.

144. (135.) Residence and office.—He shall reside at the seat of government of this State, and shall keep his office in a room in the capitol.

Ch. 1845, Jan. 27, 1871; Ch. 1666, Aug. 5, 1868; Ch. 1822, Sec. 2, June 2, 1870; Const. 1885, Art. 4, Sec. 21, and Art. 16, Sec. 10.

145. Salary.—The salary of the State Superintendent of Public Instruction shall be at the rate of twenty-five hundred ($2500.00) dollars per annum. Ch. 5179, Acts 1903, Sec. 1.

ARTICLE 7.

THE COMMISSIONER OF AGRICULTURE.

146. (136.) General duties.—The Commissioner of Agriculture shall perform such duties in relation to agriculture as may be prescribed by law; shall have supervision of all matters pertaining to the public lands under regulations prescribed by law, and shall keep the bureau of immigration. He shall also have supervision of the State prison and shall perform such other duties as may be prescribed by law. Ch. 3857, Acts 1889, Sec. 2.

147. (137.) Bureau of agriculture.—There is hereby created a bureau of agriculture, which department shall be known as the Department of Agriculture, the head or chief officer of which department shall be the Commissioner of Agriculture. Ib., Sec. 1.

148. (138.) Rules and clerical assistance.—The Commissioner of Agriculture shall have power to make and establish such rules in conformity with law as will enable him to perform the duties of his office, and to appoint such clerical assistance as the labors of his office may require, not to exceed two in number. Ib., Sec. 3.

149. (139.) To prepare information concerning counties. He shall prepare, under his own direction, a hand book, describing the geological formation of the various counties of this State, and also the topographical features of said counties, with information as to the general adaptation of the soil of said counties, for the various products of the temperate and semi-tropical zones. And for the purpose of obtaining a more general and careful estimate of the capacity and character of the soil of the counties in this State, he shall procure correct analyses of the same. Ib., Sec. 5.

150. (140.) To disseminate information.—He shall give information upon the above subject and others of interest to those who till the soil of this State, in circular or pamphlet form, which shall be placed with the judges of the county courts in the respective counties in this State, and with agricultural associations in the various counties of this State for Ib., Sec. 5.

free distribution at such times as the Commissioner may be prepared to do so.

Ib., Sec. 5.

151. (141.) To distribute seeds.—The Commissioner shall provide for the proper and careful distribution of any seeds that the government of the United States may desire to introduce into the State of Florida, and shall make arrangements for the importation of seeds that he may deem of value to this State, and for the proper, careful, and judicious distribution of the same; also for the exchange of seeds with foreign countries or adjoining States, for seed from this State, and their distribution in proper manner shall be entirely under his supervision and control.

Ib., Sec. 5.

152. (142.) To collect specimens and make report of same. The Commissioner shall collect specimens of wood suitable for manufacturing and other purposes, and specimens of agricultural, mineral, phosphate and marl deposits of the State, and cause correct analysis of such as may be deemed by him expedient, and record in a suitable book, to be kept for that purpose, such analysis, together with the name of the county in which such mineral, phosphate, or marl may be found to exist, and shall publish such facts with his annual report, which report shall be distributed through the State to the various agricultural organizations and associations, and in such other manner as he may think best to promote the interests of agriculture.

Ib., Sec. 5.

153. (143.) Collection and publication of statistics.—It shall be the duty of the Commissioner of Agriculture to arrange and adopt some plan for collecting and publishing agricultural, horticultural, pomological, and farm statistics in connection with his annual report, in such form and numbers as he may deem best, or the financial condition of the department will permit; and he shall, before the first day of January in each year, furnish the tax assessors of the several counties of the State with the necessary blanks, together with such instructions as will properly direct them in that work, and such blanks shall contain only such questions as relate to agriculture, horticulture and stock raising.

Ch. 54, Acts 1845, Sec. 1.

154. (144.) Land office.—There shall be a public land office for the State of Florida, to be kept in one of the rooms in the capitol; in which office shall be deposited and preserved all the records, surveys, plats, maps, field notes patents, and all other evidence touching the title and description of the public domain, and all lands granted by Congress to this State, or which may hereafter be granted, for whatever purpose the same may be given.

155. (145.) Bond and oath of office.—The Commissioner of Agriculture shall, before he enters upon the duties of his office, give bond with good security to be approved by the Governor of this State, in the sum of ten thousand dollars, conditioned for the faithful discharge of the duties of his office; and shall take the oath of office prescribed by the Constitution of the State.

Ib., Sec. 3; Ch. 236, Sec. 3, Jan. 9, 1849. As amended by Ch. 4962, Acts 1901, Sec. 1.

156. (146.) To have custody of documents, etc., concerning public lands.—He shall have custody of all the records, surveys, plats, maps, field notes, patents, and all other evidence touching the title and description of the public domain.

Ch. 54, Sec. 3, Acts 1845.

157. (147.) Duties as to information, conveyances and accounts, concerning public lands.—It shall be the duty of the Commissioner of Agriculture to keep his office open from the hours of nine to two of each day, Sundays and legal holidays excepted, for the information of the public, and all who may be interested in the sale, purchase, ownership, or occupancy of the public lands.

Ib., Sec. 5.

He shall draw all deeds and conveyances and deliver the same for all sales and transfers, and other disposition of the public domain, that may from time to time be ordered and made by authority of law, and keep a true and faithful record of the same. He shall keep accounts of the several grants or donations for "fixing the seat of government," for "seminaries of learning," for "common schools," "for internal improvements," or for any other purposes, in separate books, accounts, and reports, so that the rights and interests of one shall not be blended or mixed with the rights and interests of another, and each class of land shall pay the expenses of locating the same.

158. (148.) Further duties.—The Commissioner of Agriculture shall, in behalf of this State, receive from the treasury of the United States the five per cent. on sales of the public lands, or any other sums accruing from the general government to the seminary, common school, or internal improvement funds; and shall pay the same into the treasury of this State, or, if they shall belong to a fund, to the treasurer of such fund, keeping the same separate and distinct under their respective proper heads. He shall hold all needful correspondence with the several land offices of the United States in this State, or with the general land office at Washington, and shall attend the public land sales in this State, and visit the said land offices whenever, in his opinion, the interest of the State shall require it, and do and perform all things needful and proper to advance and promote the interests of the same, and when so engaged he shall have his traveling expenses defrayed out of any moneys in the treas-

Ib., Sec. 6.

ury, to be approved by the Governor, and audited by the Comptroller of public accounts as other accounts are audited and paid, independently of his stated salary.

Ib., Sec. 7.

159. (149.) To provide plats, etc.—He shall provide plats or maps of all lands selected and secured, and append thereto an accurate description of the quality, situation and location of the same, and whatever else may affect the value of each tract or body of land selected and secured, taking care to keep in separate books, and maps or plats, the lands belonging to each separate fund, which books and maps and plats, with the description thereof, shall be kept and preserved in his office.

Ib., Sec. 7.

160. (150.) To report to Governor.—He shall report to the Governor annually upon the several matters committed to his charge, the progress made in the selection of the lands, the condition and disposition thereof, and the state of each of the funds, under their separate proper heads; and shall report at other times to the Governor whenever the public interest may require, or the Governor may request him to do so.

Ch. 3877, Secs. 1 and 2, Acts 1889.

161. (151.) Seal of office.—It shall be the duty of the Commissioner of Agriculture to keep a suitable seal of office, with the following inscription upon it: "Department of Agriculture of the State of Florida." An impression of this seal shall be made upon the deeds conveying lands sold by the State, by the Board of Education and by the Board of Trustees of the Internal Improvement Fund of this State, and all such deeds signed by the officers or trustees making the same and impressed with said seal shall be operative and valid without witnesses to the execution thereof; and the impression of such seal on any such deeds shall entitle the same to record and to be received in evidence in all courts.

Chap. 54, Sec. 1, Dec. 26, 1845; Ch. 1845, Jan. 27, 1871; Ch. 1822, Sec. 2, June 2, 1870; Const. 1885, Art. 4, Sec. 21, and Art. 16, Sec. 10.

162. (152.) Residence and office.—The Commissioner of Agriculture shall reside at the seat of government in this State, and shall keep his office in a room in the capitol.

163. (153.) Fees for certain matters.—The fees of the Commissioner of Agriculture in the following matters shall be as follows:

Ch. 1981, Sec. 3, Feb. 14, 1874.

For drawing townships plats or maps, for each, three dollars; for each certificate with seal, one (1) dollar; for search of papers or records, twenty-five cents; for drawing and transcribing records, for copying and furnishing statistical

information, twenty cents for the first hundred words or fraction thereof, and ten cents for each succeeding hundred words.

164. Salary.—The salary of the Commissioner of Agriculture shall be at the rate of twenty-five hundred ($2500.00) dollars per annum. Ch. 5179, Acts 1903, Sec. 1.

ARTICLE 8.

THE STATE AUDITOR.

165. Duties.—It shall be the duty of the Governor to appoint a State Auditor, who shall be an expert accountant, and whose duty it shall be to examine the books of account, records, vouchers, papers, warrants and all other property held by or under the control of, or in the custody of all State officers and the officers of the several counties of this State, and to ascertain the correctness of such books of account, records and transactions of such officers; and the said officers shall submit their books of account, records, vouchers, papers, warrants and other property to the inspection of the State Auditor upon his request. Ch. 5119, Acts 1903, Sec. 1.

166. County official may be suspended for refusal to submit books.—Any county official who shall refuse to submit his books of account, records, vouchers, papers, warrants and other property in his possession or control belonging to the State or county or kept by him for the use of the State or county to the State Auditor for inspection may be suspended from office by the Governor. Ib., Sec. 2

167. To examine records and make reports.—The State Auditor is hereby empowered and required to make such investigations and enquiries in relation to such records and all moneys received by such officers for the use of the State or of any county, once in each year or oftener if so ordered by the Governor, and such Auditor shall make report of his doings and findings to the Governor, and shall file a copy of his report so far as the same relates to county officers, with the board of county commissioners of the county where such inspection is made; and it shall be the duty of the county commissioners with whom such copy of said report may be filed to have the substance of said report published one week in one newspaper published in said county, which publication shall be paid for by the county commissioners, or if there be no newspaper published in the county, the said county com- Ib., Sec. 3.

missioners shall have a copy of said report posted in a conspicious place at the court house in said county. It shall be the duty of the State Auditor to make a full and complete report to the Legislature at each session of the same of the financial condition of each cabinet office.

Ib., Sec. 4.

168. Compensation.—The State Auditor shall receive for his services compensation at the rate of two thousand ($2000.00) dollars per annum. The actual traveling expenses of the State Auditor shall be paid by the State, upon the approval of the Governor. The State Auditor may be removed at the pleasure of the Governor, if the Auditor should fail to discharge his duties.

Ib., Sec. 6.

169. May employ clerk.—The State Auditor may employ a clerk who shall be an expert accountant, whose salary shall not exceed one thousand dollars ($1000.00) per annum and shall be paid by the State.

Penalty for failure to submit books to Auditor for inspection, see Sections 3487 and 3488. Assistant Auditor, see Chapter 5449, Appendix.

TITLE IV.

OF ELECTORS AND ELECTIONS, OFFICES AND OFFICERS.

CHAPTER 1.

OF ELECTORS AND ELECTIONS.

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ARTICLE 1.

OF QUALIFICATIONS AND REGISTRATION OF VOTERS, HOLDING ELECTIONS AND ASCERTAINING THE RESULT THEREOF.

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170. Who are qualified electors.—Every male person of the age of twenty-one years and upwards, that shall at the time of registration be a citizen of the United States, and shall have resided and had his habitation, domicile, home, and place of permanent abode in Florida for one year, and in the county for six months, shall, if otherwise qualified according to law in such county, be deemed a qualified elector at all elections under the Constitution. Naturalized citizens of the United States, at the time of and before registration shall produce to the registration officer their certificates of naturalization or duly certified copies thereof, and shall make oath that they are the identical persons named in such certificates, before they shall be allowed to register: Provided, That the following classes of persons shall not be entitled to vote:

Ch. 4328, Acts 1895, Sec. 1.

First.—Persons not duly registered according to law.

Second. — Persons under guardianship, including those kept in or confined in any public prison.

Third.—Persons who are insane or idiotic.

Fourth.—Persons who may have been convicted of felony by any court of record.

Fifth.—Persons who may have been convicted of bribery, perjury, or larceny, or of any infamous crime in any court of this State, or any other State, or interested in any bet or wager, the result of which shall depend upon any election, or that shall hereafter fight a duel, or send knowingly, carry or accept a challenge to fight, or that shall be a second to either party, or that shall be the bearer of such a challenge or acceptance; but the legal disability shall not accrue until after trial and conviction by due form of law.

Sixth.—No person shall be permitted to vote at an election who shall have failed to pay at least on or before the second Saturday in the month preceding the day of such election, his poll taxes for the two years next preceding the year in which such election shall be held: Provided, That no person shall be prevented from voting on account of not having so paid a poll tax for any year which shall not have been lawfully assessable against him by reason of his not having been of age, or having been over fifty-five years of age, or who has lost a limb in battle, and who shall have procured and shall exhibit the certificate of the supervisor of registration to that effect as hereinafter provided for: Provided, That no person who has not been in this State one year previous to any general election, shall be required to pay more than one year's poll taxes.

A qualified elector of this State does not lose his political domicile by living in Washington City, attending to the duties of a public office there, his family being at the same time on a visit to his father in Massachusetts. State v. Dennis, 17 Fla., 389; ex rel. Atty.-Gen. v. Dillon et al., 32 Fla., 545, 14 So. Rep., 383.

Ch. 4328, Acts 1895, Sec. 2, as amended by Ch. 4537, Sec. 1, Acts 1897, Revised.

171. Day of general election.—A general election shall be held in the several counties of this State on the Tuesday next succeeding the first Monday in November, A. D. 1906, and biennially on the same day thereafter, or upon such day as may hereafter be fixed by law, at which general election there shall be chosen by the qualified electors in this State such elective State and county officers whose term of office may then require an election to be held to fill such office, beside State senators and members of the House of Representatives of this State, and such other elective officers as may be required to be elected, as provided by the Constitution and laws of this State, except as herein otherwise provided.

Ch. 4328, Acts 1895, Sec. 3, as amended by Ch. 4537, Sec. 2, Acts 1897; Consolidated with Art. 8, Sec. 5 of Const., amended 1899 as revised.

172. General elections.—A Governor, the administrative officers of the executive department, and the State senators representing the odd numbered districts, shall be elected at a general election to be held in A. D. 1908, and every four years thereafter. State senators from the even numbered districts shall be chosen in the general election in A. D. 1906, and every four years thereafter. Members of the House of

Representatives shall be chosen at every general election. A clerk of the circuit court and county judge and sheriff and superintendent of public instruction, and a county surveyor shall be chosen for each county in this State by its qualified electors at said election A. D. 1908, and every four years thereafter. A county assessor of taxes and county tax collector, and a county treasurer for each county in this State, and county board of public instruction, consisting of three members, one from each school board district, to be elected from the several counties at large of this State, and a board of county commissioners of five members, one from each county commissioner's district, elected from the several counties at large of this State, and a justice of the peace, and a constable for each justice district, shall be elected by the qualified electors thereof at every general election.

173. As to election of justices of Supreme Court.—See Section 1742.

174. Election of representatives to Congress and presidential electors.—A representative to the Congress of the United States shall be elected in and for each congressional district of this State at every general election. Electors of president and vice-president of the United States shall be elected on the first Tuesday after the first Monday in November, A. D. 1908, and on the same day every four years thereafter.

Ch. 4328, Sec. 4, Acts 1895, as amended by Ch. 4537, Sec. 3, Acts 1897.

175. Special elections.—Special elections shall be held in the following cases:

First.—Where there has been no choice of any officer who should have been elected at a general election.

Second.—When a vacancy shall occur in the office of State senator or member of the House of Representatives of this State. But in case of a vacancy in the office of State senator or member of the said House of Representatives, a special election shall not be held unless a session of the Legislature shall be held after the vacancy occurs and before a general election.

Third.—When a vacancy shall occur, more than three months before a general election, in the office of representative to the Congress of the United States, or in any other office that the Governor shall not be authorized to fill by appointment. But if any vacancy shall occur at a time not more than three months before a general election, the Governor may, in his discretion, order a special election to fill the same.

Ch. 4328, Acts 1895, Sec. 5.

Fourth.—When it shall be necessary to elect presidential electors, by reason of the offices of President and Vice-president both having become vacant.

Ch. 4328, Sec. 6, Acts 1895, amended by Sec. 4, Ch. 4537, Acts 1897.

176. Notice of general elections.—The Secretary of State shall, between the first days of July and September in any year in which a general election shall be held, make out and cause to be published, at least sixty days prior to the day of holding the election, in one or more newspapers printed at the State capital, at least once a week until the election, a notice stating what offices and vacancies are to filled at such general election in the State, and in each county and district thereof, and shall send to the sheriff of each county a notice of the offices and vacancies of each county to be filled at such general election by the qualified voters of his county, or any district thereof, and the sheriff shall cause a copy of such notice to be published weekly in a newspaper printed in his county, if there be one in the county, and if there be no such paper printed in his county, he shall cause at least five copies of such notice to be posted in the most conspicious and public places in the county.

Ch. 4328, Acts 1895, Sec. 7.

177. Notice of special elections.—Whenever a special election for any office is required to be holden, the Governor shall make an order declaring on what day the same shall be held, and deliver the same to the Secretary of State, whereupon the Secretary of State shall publish notice of the election to be holden therefor in one or more newspapers published weekly at the State capital, for not less than fifteen days nor more than forty days prior to said election, containing notice of the vacancy or vacancies to be filled, and of the county or counties in which the elections are to be held therefor; and the Secretary of State shall also deliver to the sheriff of such county or counties, in which such special elections are to be held, a notice of the time of election and the offices to be filled by the voters of their respective counties, or any district thereof, and the sheriff shall cause a copy of such notice to be published weekly in some newspaper printed in his county if there be such a newspaper, and if there be no such paper printed in his county, he shall cause at least five copies of such notice to be posted in the most public and conspicuous places in the county.

Ib., Sec. 8.

178. Oath and identification of elector for registration. Upon application for registration each elector shall be required to take and subscribe the following oath: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and of the State of Florida; that I am twenty-one years of age and have been a resident of the State of Florida for twelve months, and of this county for six months; that I am a citizen of the United States, and that I am qualified to vote under the Constitution and laws of the State of Florida." The supervisor of registration and district registration officers provided for, are

hereby authorized and required to administer this oath, and the elector shall also be required, under oath, to be administered by the registration officer, to give such description of himself as will be sufficient to clearly identify his person with the act of registration.

179. Supervisor of registration and district registration officers.—Upon the expiration of the term of office for which each supervisor of registration of electors has heretofore been appointed in each county, and every two years thereafter, the Governor shall appoint, subject to removal by him at any time, one competent, discreet and fair-minded person in each county, who shall be a qualified elector thereof, to be known as the supervisor of registration of electors in said county. Such supervisor shall hold his office for two years, and until his successor shall be appointed and qualified. He shall keep his office at the county site, and shall have exclusive charge of the registration of electors, and for this purpose shall open and keep books suitable for such registration of electors in each election district in such county. He shall appoint, subject to removal at any time by him, a district registration officer of each election district in his county, whose duty it shall be to attend to the registration of electors in such district as hereinafter provided. The supervisor of registration shall not be eligible for any other office until six months after ceasing to be such supervisor. Ib., Sec. 9.

180. Supervisor to take oath and give bond.—Compensation.—Each supervisor shall, before entering on the performance of his duties, take the oath prescribed by Section 2 of Article XVI of the Constitution, and shall give a bond to the Governor of the State in the sum of five hundred dollars, with two sureties, to be approved by the board of county commissioners of his county, conditioned for the faithful discharge of his duties as such supervisor. The compensation of such supervisors shall be such sum or sums in proportion to the amount of work to be done, as may be fixed and allowed by the board of county commissioners in each county respectively. The district registration officers shall be paid for their services by the respective counties such sum or sums as may be fixed and allowed by the board of county commissioners in each county respectively, after the supervisor of registration shall have certified to the amount of service performed by each of such district registration officers. Ib., Sec. 9.

181. Supervisor may remove district registration officer. Each supervisor shall have power at any time to remove any district registration officer within his county whenever he deems proper, and such district registration officer, when so removed, shall, on demand, surrender to such supervisor all Ibid.

books and papers connected with his office. Each district registration officer shall, before entering upon the performance of his duties, make oath in writing before any officer authorized to administer oaths, that he will well and faithfully perform the duties of his office, which oath shall be transmitted to the supervisor of registration and preserved by him.

Ib., Sec. 9.

182. To deliver books and papers to successor.—Upon the removal of any supervisor of registration of electors, it shall be his duty to immediately and promptly deliver over to his successor all the books and papers and blanks belonging to his office or connected therewith in any way.

Sec. 10, Ch. 4328, Acts 1895, amended by Ch. 4537, Acts 1897, Sec. 5.

183. Time of registration and office hours.—The supervisor of registration shall keep the registration books of the county open at his office at least three days in each week, and oftener if the county commissioners shall so order, from 9 o'clock a. m. to 12 m., and from 2 o'clock p. m. until 5 p. m. from the first Monday in August in each year in which there is any general election, for the registration of electors. And he shall give notice by publishing in a newspaper printed in his county, for two consecutive weeks immediately preceding the time of opening his books, naming the days of the week he will keep his books open. The district registration officers hereinbefore provided for shall keep the registration books for such district open at some convenient place therein for the purpose of registration, at least two days in each week, from 9 o'clock a. m. to 12 m., and from 1 o'clock p. m. to 7 p. m., from the first Monday in September until the second Saturday of the month preceding the day in each year in which there is any general election. He shall give notice by posting in three conspicuous places in his district, naming days of the week his books will be open, and at what particular building or dwelling he will be. During the time that the district registration officer is registering voters he may register in one book and the supervisor in another. The registration books of each county shall be closed on said second Saturday of the month preceding the day in each year in which there shall be a general election. And no person shall be allowed to register at any other time than during the period herein provided for the opening of said books for registration of electors.

Ch. 4328, Acts 1895, Sec. 11.

184. Registration and election districts.—Each election and registration district, voting place or precinct in this State, as now laid out, defined and fixed, is hereby recognized and continued; but the board of county commissioners in each county are hereby empowered, at any time prior to the first day of July in any year in which there shall be a general elec-

tion, to alter or change the same, or to create new districts, designating each district by number, and at the most suitable point in each district to establish a voting place or precinct, at which voting place or precinct there shall be a polling place as hereinafter provided, which said voting place or precinct shall not thereafter be changed without the consent of four members of the board of county commissioners, in meeting assembled.

185. Description of election districts to be recorded. Within ten days after there shall be any change in the division, number or boundaries of the election districts as now established, or of the location of the voting places or precincts, it shall be the duty of the county commissioners in each county in which there shall be any such change to make in writing an accurate description of any such new or altered election districts, setting forth the boundary lines thereof, so as to designate accurately the limits of each district that has not already been clearly defined and established, and they shall at the same time name and clearly define and describe in writing the voting place or precinct which they shall have established in any such new or altered election district or in any district in which they may change the voting place or precinct which they shall have established in any such new or altered election district or in any district in which they may change the voting place or precinct, and they shall forthwith cause the same to be recorded in the registry of deeds in the office of the clerk of the circuit court for such county. Ib., Sec. 11.

186. Publication.—On recording the aforesaid designations and descriptions of said election districts and voting places or precincts the said county commissioners shall publish the same for not exceeding four weeks in some newspaper published in the county, and if there be no newspaper published in said county, they shall post a plainly written or printed copy of said descriptions and designations at the court house of such county in a conspicuous place and also at three public places in the district changed or altered. Ib., Sec. 11.

187. Publication of list of qualified voters.—The supervisor of registration of the several counties of this State shall have published within fourteen days after the second Saturday in the month preceding the day in which any general election is held, a certified list of the registered and qualified electors of each election district wherein such election shall be held. Ch. 4328, Sec. 12, Acts 1895, amended by Ch. 4537, Acts 1897, Sec. 6.

188. Secretary of State to furnish books and blanks.—It shall be the duty of the Secretary of State to cause a sufficient number of registration books, blank oaths for registration, certificates of registration, applications for renewal of Ch. 4328, Acts 1895, Sec. 13.

certificates, certificates of transfer, and other blanks required to be used under this act, to be prepared so that there shall be three of said registration books for each election district in each county, which registration books shall, at the top of each page, have written or printed the oath required by the Constitution to be taken by electors at the time of registration, and shall be ruled in columns with proper headings so as to indicate the name, age, color, occupation and place of residence, including the street, lot and block of any town or city, and the date of registration of each elector and the number of the certificate that may be issued to him, with a separate column at the right side of each line for such notes and entries as may from time to time be necessary to put opposite any name: Provided, That outside of towns and cities the residence may be designated by number of quarter section or convenient sub-division thereof. The pages of said book shall be alphabetically arranged and numbered, and the lines in each page shall be numbered, and the names thereon shall be alphabetically registered.

Ib., Sec. 13.

189. Requisition for books and blanks.—Upon requisition of the county commissioners of any county, the Secretary of State shall furnish them the required number of said books and blanks, which the county commissioners shall deliver to the supervisor of registration of their respective counties.

Ib., Sec. 14.

190. Supervisor of registration to make up books.—Immediately upon the expiration of the time for registration at the several precincts, each district registration officer shall promptly deliver his book and all blanks left in his possession to the supervisor of registration at the county site, and thereupon the supervisor of registration shall proceed to make up the registration books for the several districts in his county, so that three registration books for each election district shall exactly correspond and be as nearly as may be a duplicate the one of the other. Such books shall be so marked on the backs thereof as to designate clearly to which election district they belong, and one of the said books for every election district shall be marked by the supervisor on the back thereof with the words "Office Copy," and which office copies shall at all times be kept by the supervisor in his office.

The original registration books used by the district registration officials shall also, after being returned by them, be kept by the supervisor in his office.

Ib., Sec. 15.

191. Registration certificates.—Each elector, upon being registered, shall be furnished by the registration officer with a certificate of registration, which certificate issued by the supervisor, shall be numbered in each district for which they

are issued, by consecutive numbers, in the order in which they are issued by him, which certificate shall contain a statement of the full name, age, color, height, occupation, place of residence, and date of registration as entered in the registration books, which certificates shall be signed by the registration officer.

192. Voter must be registered in district.—No person shall be allowed to vote in any other election district than the one in which he is registered; nor shall any person whose name does not appear upon the registration books be allowed to vote: Provided, That when the name of any one who has duly registered does not appear on the registration books of the election district in which he registered, and in which he resides, such person shall, on making satisfactory proof to the supervisor of registration of the fact of his previous registration, and that his name has been improperly omitted from the said books, be entitled to have his name restored to said books on application to the supervisor of registration, and shall thereupon receive from such supervisor a certificate of registration similar to that hereinbefore provided for, across the face of which shall be written in red ink the words "Restoration Certificate," by the supervisor of registration, on the production of which, at the proper polling place of the proper election district, he shall be entitled to vote, even though his name does not appear on the registration books of such district: Provided, Said certificate of registration properly identified him to the managers of the election. The certificate of registration shall be of the following form:

REGISTRATION CERTIFICATE NO.... Ib., Sec. 15.

State of Florida, }
.....County. }

Election District No.....

The bearer, ..., is at the date hereof a qualified elector in the above district. He resides at ...., is .... years of age, by occupation a ..... He is....feet....inches in height; his color is....., and he is entitled to vote in said district, unless hereinafter disqualified.

Registered on this ..... day of ..... A. D. 19.....

.....

Supervisor of Registration for said County.

193. Certificate of transfer.—The certificate of transfer to be used in cases of transfer from one election district to another shall be of the following form:

TRANSFER OF REGISTRATION CERTIFICATE NO..

State of Florida, }
.....County. }

Election District No.....

The bearer, ..., is at the date hereof a qualified elector in the above district. He resides at ...., is ..... years of age, by occupation .... He is .... feet .... inches in height. His color is ....., and he is entitled to vote in said district No....., where he formerly resided.

Transferred on this ..... day of ..... A. D. 19....

.....
Supervisor of Registration for said County.

Ib., Sec. 16.

194. New registration books.—Whenever it may be necessary, the supervisor of registration of any county shall transfer and transcribe into new registration books from whatever registration books may be in possession of such supervisor, the names of all electors who appear upon said old books to be properly and legally registered electors thereon at the time of such transfer to said three new books, taking care that the names of all the electors shall be transcribed only in the books of the election district to which such electors belong.

Ib., Sec. 16.

195. When books to be closed.—At the end of the time provided by this act for the registration books to be kept open by the supervisor of registration the said books shall be closed, and shall not again be opened for registration until after the next succeeding general election, except as herein provided, and the supervisor of registration shall attach his certificate to each of said three registration books, certifying that they have been examined and revised by him, and that he has caused such registration to be made in compliance with the Constitution and laws of the State of Florida, fairly and impartially, to the best of his ability, and such books, or lists of names so certified, with such additions, corrections, erasures and revisions as may from time to time, in conformity to law, be made to or of the same, shall constitute the registration books and lists of such county.

Ib., Sec. 16.

196. Custodian of registration books.—The supervisors of registration of electors in the various counties shall be the official custodians of the books of registration, and they shall have the exclusive control and management of all matters pertaining to the proper registration of electors at all times. Whenever it shall come to the knowledge of a supervisor of

registration that any elector has died or become disqualified to vote by reason of conviction of any disqualifying crime, or from any other cause, or has removed from the county, or from one election district to another in the county without obtaining a certificate of transfer, or that his right to vote has become in any wise affected since his registration, it shall be the duty of said supervisor to make a note of such fact on the proper registration books opposite the name of such person, and to mark off the names of such persons as have so ceased to be qualified electors by running a pen through the name of each person on such books, and in such cases the supervisor shall carefully note in said books the date of such erasure, and in no case shall the inspectors or managers of any election allow any person to vote whose name shall appear on the books to have been struck off or erased, whether such person shall have a certificate of registration or not, unless he produces or exhibits to such managers a proper certificate, signed by the supervisor of registration, showing that he has been properly restored to said books subsequent to the date of said erasure of his name from said books.

197. Names may be restored to registration books.—All additions to, corrections and other entries in, and all erasures of names, and the causes and dates thereof, shall be made by the supervisors in all three of the registration books belonging to each election district in his county, so as to keep all three of said books at all times as near as may be duplicates the one of the other: Provided, That when the name of any elector shall have been wrongfully or erroneously erased, the same shall be restored by the supervisor of registration on application and proofs to him, or may be restored by order of the board of county commissioners, if the supervisor on application and proofs, fails to do so. Ib., Sec. 16.

198. Renewal of registration certificate.—Every elector shall have the right to a renewal of his certificate of registration without fee or charge when the same becomes defaced by time or accident, upon his surrendering such certificate so defaced to the supervisor of registration. Any elector who may lose his certificate of registration shall be entitled to a renewal thereof by the supervisor of registration of the county in which such elector was registered upon application therefor, and proof of the loss, in the following manner: He shall at any time before the next general election apply for a renewal of his certificate, stating under oath, to be administered by the supervisor, the facts of his former registration and of such loss, and that he has not sold, bartered or parted with his certificate, and has not wilfully destroyed or lost it, which application the supervisor shall examine into, Ib., Sec. 17.

and if the facts therein alleged shall be sustained to the satisfaction of the supervisor, he shall issue to the applicant a renewal of his certificate, marking or stamping across its face the word "Renewal," and shall make the proper entry in the registration books of the fact of such renewal. The decision of the supervisor in such case, if it shall be against the application, shall be subject to revision by the board of county commissioners, if he be notified of such appeal to said board within three days after notice to the applicant of the rejection of his application.

Ib., Sec. 18.

199. Transfer certificate from one district to another.—In case of the removal of an elector from one district to another district in the same county, such elector shall notify the supervisor of registration of such change of residence, and shall surrender his certificate of registration to such supervisor, who shall at once enter the fact in the proper registration books, and shall give, without fee or charge, such elector a certificate of transfer of registration in accordance with such change of residence. If such person was registered before a certificate of registration was provided for by law, and therefore he has no certificate, he shall be entitled to have his name transferred as above provided for, and shall also receive the certificate of transfer as above provided for. In case of refusal or failure of any elector to notify the supervisor of his removal of his residence as in this section provided for, it shall be the duty of such supervisor, upon the facts of such removal being brought to his knowledge, to erase the name of such person from the registration books, and to note therein the cause and date of such erasure. No elector, who, having been previously registered, shall have removed from one district to another in the same county, shall be allowed to register, nor shall he be allowed to vote by the managers of any election, without a certificate of transfer of registration, as above provided.

Ch. 4328, Sec. 9, Acts 1895, as amended by Ch. 5250, Acts 1903, Sec. 1.

200. County commissioners to examine and revise registration books.—It shall be the duty of the county commissioners of each county, on the first Wednesday after the registration books are closed, as provided for in this article, in every year in which there is a general election, to examine and revise the registration books of said county, erasing therefrom the names of all such as have died, or removed from the county, or from one district to another in the same county, or who are otherwise disqualified to vote, and restoring such names as have been improperly taken off by the supervisor of registration; said examination and revision shall be completed within three days thereafter, and immediately the county commissioners shall cause to be published

in a newspaper, if there be one published in such county, and also post at the court house door a list of the names alphabetically arranged, that have been erased or stricken from the registration books of each district in such county, either by the supervisor of registration, or said board of county commissioners; and any person whose name shall have been wrongfully or erroneously erased or stricken off, and who shall, within a time not less than ten days before the day of any general election to be held in such county, make such fact appear to the satisfaction of said board, shall be entitled to have his name restored to the registration books, and the supervisor of registration, when so ordered by the board of county commissioners shall restore such name or names to said books, with the date of replacement and entries as to how or why such restoration was made, and he shall, without charge, issue to said person or persons a new certificate or certificates of registration, as provided for in Section 198; and it is hereby made the duty of the county commissioners of each county to hold such special meetings as may be necessary from time to time for carrying the provisions of this section into effect, and they are authorized to require the county treasurer to pay such expenses as may be necessary in the performance of their duties: Provided, That in case any special election is held in any county of the State it shall be the duty of the board of county commissioners to hold a meeting at least fifteen days before said election and proceed to revise the registration list and give the notices as provided, as in cases of general election in this article.

201. Inspectors of election to be furnished with copy of registration books.—At each election the supervisor of registration shall furnish the inspectors of elections of each polling place in each election district with one of the registration books for such district, the supervisor retaining in his office the other copy or duplicate of such book that he has marked "Office Copy," as provided in Section 196, for the care and custody of which books so delivered to them, the inspectors receiving the same shall be responsible, and which books they shall return to the supervisor of registration within three days after the close of the election. The supervisor of registration shall not be authorized or required prior to any election to furnish copies of the registration books of his county, or to allow indiscriminate handling or examination thereof by any one, but he shall at all times allow any elector to examine as to the status of his own name upon the books of the election district to which such elector may belong. Ch. 4328, Acts 1895, Sec. 20.

202. Poll taxes.—The supervisor of registration shall note on the registration books, which he shall furnish to the Ib., Sec. 21.

inspectors of the different election districts, the names of all persons registered therein who shall have paid on or before the second Saturday of the month immediately preceding the day of election, their poll or capitation taxes for two years next preceding the year in which such election is held, as shown by the lists furnished to the supervisor by the tax collector, and only such persons shall be deemed qualified voters authorized to vote at any general, special or municipal election: Provided, That no person shall be prevented from voting on account of not having so paid a poll tax, for any year which shall not have been lawfully assessable against him by reason of his not having been of age, or was over the age of 55 years, or who has lost a limb in battle, and who shall have obtained from such supervisor a certificate to that effect, and shall at the time of offering to vote exhibit such certificate to the inspectors of election. And it shall be the duty of such supervisor upon proof being made to him to give such certificate to such person, without cost to such person, provided he is otherwise a duly qualified and registered voter.

Ch. 4328, Sec. 7, Acts 1895, as amended by Ch. 4537, Acts 1897, Sec. 7.

203. County commissioners to prepare ballot boxes.—The county commissioners (or in case of a municipal election the city or town council) shall cause to be prepared or secured one ballot box for each polling place in their respective counties, of sufficient size to receive and contain all the ballots of the particular precinct or voting place for which it is intended, and it shall be plainly marked or labeled, with the name of the election district or precinct, or number thereof, for which it is intended. Before any general or special election they shall place in said ballot box twice as many official ballots, so printed by them, as there are registered qualified electors in said election precinct, and after securely locking said box, sealing up the key-hole thereof, and all other openings, shall send the key thereof, in a sealed envelope, to the inspector of election of said election district together with the box. The custodian shall be placed under oath or affirmation to perform his commission faithfully and impartially, without favor or prejudice to any political party.

Ch. 5246, Sec. 23, Acts 1903.

204. Tax collectors to be in office for receiving poll taxes for certain hours preceding election.—The tax collector of each county shall in person or by deputy be present in his office from 9 a. m. to 1 p. m. and from 2 p. m. to 6 p. m. each day, Sundays excepted, for twenty days immediately preceding the second Saturday of the month preceding the day of any general or special election, for the purpose of receiving all poll taxes properly tendered to him; and he shall as soon as practicable after receiving the same, give receipts therefor in due form of law, in which receipts shall be stated the color and age of the elector and the number of the elec-

tion district in which such elector or person paying such poll tax resides. The tax collector shall make a list of those who have paid their poll taxes in each year prior to the second Saturday of the month preceding the day in any year in which any general or special election shall be held, and such list shall be alphabetically arranged. The tax collectors of the several counties of this State, within five days after the second Saturday in the month preceding the day in any year in which any general or special election shall be held, shall make a certified list in duplicate of all persons who have paid their poll taxes for the two years next preceding the year in which such election is held, prior to the second Saturday in the month preceding the day upon which such election shall be held; and one of said lists shall be delivered by the tax collector as soon as the same is completed to the supervisor of registration, to be filed in his office, and the other shall be forwarded to the Comptroller of the State of Florida, which he shall file in his office.

(Penalty for violation: See Sec. 3823).

205. Appointment of inspectors and clerks of election. For the purpose of carrying on and conducting all such general and special elections, it shall be the duty of the county commissioners in each county, at least twenty days prior to the holding of any general or special election therein, to appoint three intelligent, discreet and fair minded inspectors of election, and a clerk of election, for each polling place in each and every election district in such county, all of whom shall be residents and registered qualified electors of the election district for which they shall be appointed; all of whom shall not belong to the same political party. The county commissioners in each county shall cause the names of such inspectors and clerks of election to be published in a newspaper published in such county, if there be a newspaper printed in the county, or posted in a conspicuous place at the court house, if there be no newspaper printed in the county, for at least fifteen days before the day of holding any general or special election in such county.

Ch. 4537, Acts 1897, Sec. 8, amending Sec. 24, Ch. 4328, Acts 1895.

Persons acting as inspectors, recognized by electors as such and making returns, presumed to act regularly.—Pickett v. Russell, 42 Fla., 116, 28 So. Rep., 764.

206. Compensation of inspectors and clerks.—Inspectors and clerks of any special or general election of any county shall be paid for their services by their respective board of county commissioners, and the inspectors who carry the returns of such election to their county seat and properly deliver them shall receive two dollars per day, and five cents per mile each way while performing such service. No elec-

Ibid.

tor who cannot read and write the English language shall be appointed inspector or clerk of election.

Ch. 4537, Acts 1897, Sec. 9, amending Sec. 25, Ch. 4328, Acts 1895.

207. Filling vacancies, oaths, majority to control, etc.—In case of the absence or refusal to act of any of the inspectors or clerks of election appointed by the board of county commissioners for any district or polling place, the qualified electors present favoring the ticket which the absent inspector, inspectors or clerk had been chosen to represent, shall choose from among their number one inspector, inspectors or clerk as will, together with the inspector, inspectors, or clerk present, constitute a board of four: Provided, The inspector, inspectors or clerk so chosen shall (if any such be present), represent the same political party that the absent inspector, inspectors or clerk would represent if present, and the person or persons so chosen shall be authorized to act as inspectors or clerk of the election at the polling place where they may be chosen; and said inspectors and clerks shall each take and subscribe an oath or affirmation, which shall be written or printed, to the effect that they will perform the duties of inspectors and clerk of election according to law, and will endeavor to prevent all fraud, deceit or abuse in conducting the same. Such oath may be taken before any officer authorized to administer oaths, or before either of the persons who are to act as inspectors, one of them to swear the others, and one of the others thus sworn in turn to administer the oath to him who has not been sworn, and such oath shall be returned with the poll list and the returns of the election to the supervisor of registration. One of the inspectors shall be chosen by them as chairman of their board. (In any and all questions that may arise before said inspectors of election, the decision of a majority of them shall decide such question).

Delay of one hour in opening polls because of failure of inspectors appointed to appear, will not avoid election.—Pickett v. Russell, 42 Fla., 116, 28 So. Rep. 764.

Ch. 4699, Acts 1899, Sec. 1, amending Sec. 26, Ch. 4328, Acts 1895.

208. Polling places.—There shall be in each and every election district in each county one polling place, presided over and managed by a board of inspectors and clerk of election, as provided for by law. At each of said polling places a space, such as the inspectors of election shall deem fit and sufficient, shall be railed off and constructed, with an opening at one end or side for entrance of the voter and an opening at the other for his exit, as a polling place in which to hold the election. But one voter shall be allowed to enter any polling place at a time, and no one except the inspectors of the election shall be allowed to speak to the voter while in the polling place casting his vote, and no inspector shall

speak to or interfere with any voter concerning the manner of his voting or any ballot he may vote, otherwise than to perform his duties as such inspector specified herein.

209. Time of opening and closing the polls.—The polls shall be opened at such voting places at 8 o'clock a. m. on the day of the election, and shall be kept open until sundown of the same day, the time to be observed for such opening and closing of the polls to be regulated by the customary time in standard use in such locality. The inspectors may, however, adjourn between twelve and one o'clock for half an hour. The inspectors shall make public proclamation of the opening and closing of the polls, and the midday adjournment. During the adjournment the ballot box shall be kept in the possession of, and in view of two of the inspectors, who shall not have the key thereof, and during the election and canvass of the vote the ballot box shall not be concealed from the public. Ch. 4328, Acts 1895, Sec. 27.

210. Secret ballot.—In all elections hereafter held in this State on any subject which may by law be submitted to a vote of the people, and for all, or any State, county, district or municipal officers, the voting shall be by secret official ballots printed and distributed as hereinafter provided, and no ballot shall be received or counted in any election to which this act applies, except it be provided as herein prescribed. Ib., Sec. 28.

Secrecy of ballot must be preserved.—State ex rel. Smith v. Anderson, 25 Fla., 240, 8 So. Rep., 1.

211. Pay for printing ballots.—The printing and delivery of ballots and cards of instruction to voters hereinafter prescribed shall in municipal elections be paid for by the several cities or towns respectively, and in all other elections by the several counties respectively. Ib., Sec. 29.

212. County commissioners or city or town council to print names of candidates on tickets, etc.—The board of county commissioners (or in case of a municipal election the city or town council) of each county shall cause to be printed on the ballots to be used in their respective counties the names of all candidates who have been put in nomination by any caucus, convention, mass meeting, primary election or other assembly of any political party or faction in this State and certified and filed with them not more than sixty nor less than twenty days previous to the day of election, which certificate shall contain the name of each person nominated and the office for which he is nominated, and shall be signed by the presiding officer and secretary of such caucus, convention, mass meeting or other assembly, or by the canvassing board of such primary election, and be duly acknowledged by Sec. 10, Ch. 4537, Acts 1897, amending Sec. 30, Ch. 4328, Acts 1895.

one or more of them before any officer authorized by law to take the acknowledgments. The board of county commissioners (or in case of a municipal election the city or town council) shall also cause to be printed upon said ballots the name of any qualified elector who has been requested to be a candidate for any office by written petition signed, in case of a candidate for a State or Federal office, by at least five hundred electors; in case of a county or municipal office, by at least twenty-five qualified electors to vote in the election to fill said office, when such petition has been filed with them not more than sixty days nor less than twenty days previous to the election, and in addition to the names printed upon said ballot; and whether there be any names printed on said ballots or not, there shall be printed under each office to be voted for at the election, blank lines in number equal to the number of persons who may be elected to fill that office.

Ibid.

213. When name not to be printed on ticket.—The name of no person shall be printed on the ballot who shall, not less than twenty days before the election, notify the board of county commissioners, in writing, acknowledged before an officer authorized by law to take acknowledgments, that he will not accept the nomination specified in the certificate of nomination or request of electors.

Ibid.

214. Substituting candidate.—When any person who has been regularly nominated and who shall decline to run for the office to which he has been nominated, the party by which such person was nominated shall be allowed five days after such declination to run by such person, in which to substitute another candidate.

Ibid.

215. Secretary of State to certify nominations.—In case of any person to be voted for by the electors of the whole State, or of any entire congressional district, such certificate of nomination shall be filed in the office of the Secretary of State not less than thirty days before the day of election, and such Secretary of State shall thereupon immediately certify to the board of county commissioners of each county in the State in case of an officer to be voted for by the electors of the whole State, and to the boards of county commissioners of the counties composing the congressional district in case of an officer to be voted for by the electors of such district, upon suitable blanks to be prepared by him for that purpose, the fact of such nomination and the name of the nominee or nominees and the name of the office to which he or they may be nominated, and the name of such person shall be printed by the board of county commissioners upon the ballot in its proper place in all respects as herein provided

for nomination filed in the office of the board of county commissioners.

(Penalty for failure to certify nomination: See Sec. 3824.)

216. Preservation of certificates and petitions of nominations.—The board of county commissioners shall cause to be preserved in the office of the clerk of the circuit court all certificates and petitions of nominations filed therein under the provisions of this act for six months after the election for which such nominations are made. Ch. 4328, Acts 1895, Sec. 32.

217. Order of titles and names on ballots.—The ballots printed in accordance with the provisions of this act shall contain the names of all candidates nominated as hereinbefore provided who have not declined. The names of all candidates for the same office shall be printed together, irrespective of party. But the order in which the titles to the several offices to be filled shall be arranged upon the ballots, shall be left to the discretion of the officer charged with the printing of the said ballots. Ib., Sec. 33.

218. Constitutional amendment.—Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of each amendment or other public measure shall be twice in the same language indicated upon the ballot after the list of candidates, followed in one case by the word "Yes" and in the other case by the word "No." Ib., Sec. 34.

(See Ch. 5405, Appendix).

219. Directions for printing, etc., of ballot.—All ballots provided by the board of county commissioners of any county for an election shall be alike, printed in plain type in straight lines, upon plain white paper, so thick that the printing cannot be distinguished from the back, with a slender line between each name, and extending sufficiently to the left of the names to easily permit marking before each name a cross mark (x), and in the appropriate place the words, "Vote for One," (or two, or other number as the case may be), to indicate the number which may be elected to each office, and shall be substantially in the form prescribed in Section 220 (except that the order in which the several offices to be filled are stated may be varied). Ib., Sec. 35.

Legislature may prescribe form of ballot.—State ex rel. Atty.-Gen. v. Dillon et al., 32 Fla., 545, 14 So. Rep. 383; State ex rel. Law v. Saxon, 30 Fla., 668, 12 So. Rep., 218; cannot restrict voter to voting for some one whose name appears on ballot.—State ex rel. Atty.-Gen. v. Dillon, supra.

220. Form of ballot.—Official ballot, election A. D. 190—(year to be printed.) Precinct No.....County, (precinct

Ib., Sec. 35.

and county to be printed). (Make a cross mark (x) the name of the candidate of your choice).

For Governor.

Vote for one:

William Jones.

John Smith.

For Secretary of State.

Vote for one:

William King.

Thomas Moore.

James Simpson.

For Sheriff.

Vote for one:

Thomas Jones.

George Smith.

James White.

For Representative in General Assembly.

Vote for one (or more as case may be):

William Daniels.

John Doe.

Constitutional Amendment, Article ...., Section .....

Yes.

No.

Constitutional Amendment, Article ...., Section .....

Yes.

No.

221. Ballots to be fastened together.—All ballots for use in any precinct or ward shall be fastened together in consecutive numbers in books or blocks, in such manner that each ballot may be detached and removed separately. Each ballot shall have attached to it a stub with perforated lines of sufficient size to enable one of the inspectors to write or stamp his name or his initials thereon, and so attached to the ballots that when the same is folded the stub can be detached therefrom without injury to the ballot or exposing the initials thereof. Ib., Sec. 36.

222. Number of ballots for each voting place.—There shall be provided for each voting place at least one hundred ballots for each fifty registered qualified electors at said polling place. Ch. 4537, Acts 1897, Sec. 11, amending Sec. 37, Ch. 4328, Acts 1895.

223. Booths.—The county commissioners of each county, (or in case of a municipal election, the mayor or other chief executive officer), shall provide at each polling place, a room or covered enclosure and in such place or covered inclosure shall provide booths or compartments, one booth or compartment for each one hundred or fraction of one hundred over fifty qualified electors registered for that election, and furnish each with a shelf or table for the convenience of electors preparing their ballots. Each booth or compartment shall be so arranged that it will be impossible for one elector at a shelf or table in one compartment to see an elector at a shelf or table in another compartment in the act of marking his ballot. Each voting table or shelf shall be kept supplied with conveniences for marking the ballots. Ch. 4329, Acts 1895, Sec. 2, amending Sec. 38, Ch. 4328, Acts 1895.

(Penalty for destroying booth: See Sec. 3812.)

224. Public excluded from voting place.—No person shall be permitted under any pretext whatever to come within fifteen feet of any door or window of any polling room from the opening of the polls until the completion of the count of the ballots and certificates of returns, except as herein provided. Ch. 4328, Acts 1895, Sec 39.

225. Instructions for electors.—The board of county commissioners (or in case of a municipal election the city or town council) of each county shall cause to be printed, in large type on cards, instructions for the guidance of electors in preparing their ballots. They shall furnish to the inspectors twelve, or more if necessary, such cards for each precinct or ward, and it shall be the duty of the inspectors to post one of such cards in each booth or compartment for the preparation of ballots and not less than three in prominent places elsewhere and outside of the polling place on the day of election. Said cards shall be printed in large, clear type, and shall con- Ch. 4537, Acts 1897, Sec. 12, amending Sec. 40, Ch. 4328, Acts 1895.

tain full instructions to electors as to what shall be done: First, to obtain ballots for voting; second to prepare the ballots for deposit in the ballot box; third, to obtain a new ballot in the place of one accidentally spoiled.

Ch. 4328, Acts 1895, Sec. 42.

226. Not to go within fifteen feet of polling places.—Except as electors are admitted, one at a time, to vote, and except the sheriff or his deputy, the inspectors and clerks of election, and as many electors as there may be booths or compartments, no person shall be permitted within fifteen feet of the polling place. No sheriff, deputy sheriff or city policeman shall enter the polling place without permission from a majority of the inspectors of the election, except to cast his own ballot.

Ib., Sec. 43.

227. Challenges.—When the right to vote of any person who demands to be permitted to vote is questioned by any elector, the said challenge shall be communicated to the inspectors before the person is permitted to vote, by the sheriff or some other officer or person in attendance and in charge of admission to the polling place, when his right to vote must be determined as required by law.

Ib., Sec. 44.

228. To occupy booths alone and for only five minutes.—No elector, while receiving, preparing and casting his ballot, shall occupy a booth or compartment for a longer time than five minutes. No elector shall be allowed to occupy a booth or compartment already occupied by another, nor to speak or converse with anyone, except as herein provided, while in the polling place.

Ib., Sec. 45.

229. To enter polling place for voting only.—After having voted, or declined or failed to vote within five minutes, the elector shall immediately withdraw from the place and go beyond the prohibited distance, and shall not enter the polling place again.

Ch. 4329, Acts 1895, Sec. 3, amending Sec. 46, Ch. 4328, Acts 1895.

230. Voting.—Each elector, upon entering the polling place, shall be given one ballot by the inspectors. Before delivering the ballot to the elector, at least one of the inspectors shall write in his own hand his initials or name on the stub attached to the ballot. On receiving the ballot, the elector shall forthwith and without leaving the polling place, retire alone to one of the booths or compartments provided for that purpose, and there prepare his ballot by marking with pen and ink or pencil, in the appropriate margin or place a cross mark "x" before the name of the candidate of his choice for each office to be filled, or by filling in the name of the candidate of his choice in the blank space provided therefor, and

marking the cross mark "x" in the appropriate margin, and likewise by marking the cross "x" before the answer he desires in case of a constitutional amendment or other question submitted to a vote of the people.

231. Who may have assistance in preparing ballot.—Any elector applying to vote who by reason of blindness or the loss of the use of his hand or hands is unable to prepare his ballot, may have the assistance of the inspectors in the preparation of his ballot, who shall retire to a booth or compartment with the elector and there prepare the elector's ballot, so as to indicate the elector's declared choice of candidates as to each office to be filled without suggestion or interference from inspectors. But in all cases any elector before retiring to the booth as provided in this section may have one of the clerks of the election to read over to him the titles of the offices to be filled and the candidates therefor. Ib., Sec. 4, amending Sec. 47, Ch. 4328, Acts 1895.

232. Elector declaring his choice. — Before any elector applying for asistance in the preparation of his ballot as provided for in the preceding section, shall be required or permitted to declare his choice of candidates, all electors, including those in the booths or compartments, after voting shall be required to withdraw from the voting place. Ch. 4328, Acts 1895, Sec. 48.

(Penalty for deceiving elector in preparing ballot: See Sec. 3814.)

233. Spoiled ballots.—Any elector who shall, by accident or mistake, spoil a ballot, so that he cannot conveniently or safely vote the same, may return it to the inspectors who shall immediately detach the stub and destroy, without examination, the ballot so returned, and shall give to the elector another ballot in lieu thereof, but in no case shall an elector be furnished with more than three ballots. In no case shall any person be permitted to carry a ballot outside of the polling room. A record shall be kept by the clerk of election of all ballots destroyed, as herein provided for. Ib., Sec. 52.

234. Depositing ballot.—After preparing his ballot the elector shall fold the same so as to conceal the face thereof and show the stub thereto attached, with the name or initials of the inspector, and hand it to the receiving inspector who shall detach the stub therefrom and return the ballot to the elector who shall deposit the ballot in the ballot box in the presence of the inspectors. All stubs detached from ballots as provided for in this section shall be numbered consecutively and filed by the inspectors. Ib., Sec. 53.

235. Marking more names than persons to be elected. If the elector marks more names than there are persons to be elected to an office, or if for any reason it is impossible to Ib., Sec. 54.

determine the elector's choice for any office to be filled, his ballot shall not be counted for such office; but this shall not vitiate the ballot, so far as properly marked, and nothing herein shall be construed to prevent any elector from voting for any qualified person other than those whose names are printed on the ballot.

Ib., Sec. 58.

236. Clerk to keep list of those voting.—When any person shall have voted, his name shall be checked on the margin of the page opposite thereto upon the registration books by one of the inspectors, and the clerk of the election shall keep a poll list, which shall contain one column headed "Names of voters," and the name of each elector voting shall be entered by the clerk in such column as he votes. And the inspectors of election shall have the authority and power to prevent all repeating, and to prevent any person from voting a second time at the same election when they have good reason to believe such person has already voted. They shall have full power to refuse to allow any person to vote who is not a qualified elector, or who has become disqualified for any cause to vote in such election district. They may also prevent any elector from consuming more time than five minutes in voting. But no inspector shall examine, read or handle the ballot being voted or about to be voted by an elector, or interfere in any way with the voting of any elector otherwise than is herein provided.

237. Inspectors to maintain good order.—The inspectors shall possess full authority to maintain good order at the polls and enforce obedience to their lawful commands during an election, and during the canvass and estimate of the votes.

Ib., Sec. 58.

238. Deputy sheriff at each polling place.—There shall be at each polling place in each election district, a deputy sheriff, to be deputized for such purpose by the sheriff of the county, who shall be required to be present during the whole time that the polls are kept open and until the election is completed, who shall be subjected to all lawful commands of the inspectors, and who shall see that there is no interruption of good order. Such deputy sheriff shall have power, when necessary to maintain the peace, to summon a posse from among the bystanders to aid him in maintaining the peace and good order at the polls.

(Penalty for failure to assist deputy: See Sec. 3834.)

Ib., Sec. 58.

239. Sheriff and other officers not allowed in polling places.—No sheriff, deputy sheriff, policeman or other officer shall be allowed to come within the polling place unless summoned into the same by a majority of the inspectors. On

failure of any sheriff, deputy sheriff, policeman, or other officer to comply with the provisions of this section, it shall be the duty of the inspectors of election or one of them, to make affidavit against such sheriff, deputy sheriff, policeman or other officer for their arrest.

240. Bar rooms to be closed.—All bar rooms, saloons and other places for the sale of liquors by retail, shall be closed at six o'clock of the evening preceding the day of any election, and shall remain closed until 6 o'clock in the morning of the day thereafter. And during the time aforesaid, the sale of all intoxicating liquors is prohibited. Ib., Sec. 59.

(Penalty for violation of this section: See Sec. 3813.)

241. Canvass of ballots.—At the close of the election at each polling place in each election district the inspectors and clerk shall immediately proceed to open the ballot box and in the presence of the public if there be any present who desire to witness said canvass, count the ballots therein and continue such count without adjournment or interruption until the same is completed. The ballots shall be first counted, and if the number of ballots shall exceed the number of persons who shall have voted, as may appear by the poll list kept by the clerk, and by the stubs detached by the inspectors, the ballots shall be replaced in the box and one of the inspectors shall publicly draw out and destroy unopened and unexamined as many of such ballots as shall be equal to such excess. If two or more ballots shall be found folded together, so as to present the appearance of a single ballot, they shall be laid aside until the count of the ballots is completed, and if, upon comparison of the count, and the appearance of such ballots, a majority of the inspectors shall be of the opinion that the ballots thus folded together were voted by one person such ballot shall be destroyed. Ib., Sec. 60.

242. Proclamation of result and returns.—The canvass being completed, the result shall be publicly proclaimed. Duplicate certificates of the result of such election shall be drawn up by the inspectors or clerk at each and every election district, which shall contain in words written, at full length, the name of each person voted for for each office, and the number of votes cast for each person for such office, and if any question shall be submitted to an election, such certificate shall also contain the number of votes cast for and against such question; which certificate shall be signed by the inspectors and clerk, and one of such certificates shall be by one of the inspectors delivered, without delay, securely sealed, to the supervisor of registration, and the other to the county judge of the county; and the poll lists and oaths of Sec. 2, Ch. 4699, Acts 1899, amending Sec. 61, Ch. 4328, Acts 1895.

the inspectors and clerks, together with all ballot boxes, ballots, ballot stubs, memoranda and papers of all kinds used by the inspectors and clerk in conducting such election shall also be transmitted, sealed up by the inspectors, with the certificates of the result of the election, to the supervisor of registration, to be filed in his office.

Ib., Sec. 3, amending Sec. 62, Ch. 4328, Acts 1895.

243. Canvass of returns.—On the sixth day after any election, or sooner, if the returns shall have been received, it shall be the duty of the county judge and the supervisor of registration, to meet at the office of the said supervisor of registration, and take to their assistance the chairman or other member of the board of county commissioners, and in case of absence, sickness, refusal to act, or other disability of the county judge or supervisor of registration, another member of the board of county commissioners, who shall be designated by the chairman of said board, shall act in his place, who shall constitute and be the county canvassing board of elections, and they shall publicly proceed to canvass the vote given for the several offices and the persons as shown by the returns on file in the offices of such county judge and supervisor of registration. Such canvass shall be made solely, exclusively and entirely from the returns of certificates of the inspectors in each election district, as signed and filed by them with the county judge and supervisor of registration respectively, and in no case shall the board of county canvassers change or vary in any manner the number of votes cast for the candidates, respectively, in any polling place in the county, as shown by the returns of the inspectors of such polling place.

Mere irregularity in conducting an election or making returns do not authorize rejection of returns.—State ex rel. Bisbee v. Canvassers, 16 Fla., 30. Mandamus will lie to compel canvass of returns of election of representative in Congress.—State ex rel. Bisbee v. Board of County Canvassers, 17 Fla. 9. County canvassers cannot look beyond the inspectors' returns except to determine their genuineness as being signed by the inspectors.—Ib. The mere verbal repetition in one of the returns from a precinct, and mere immaterial verbal variances, or that inspectors were not sworn, or oaths not signed, will not authorize rejection of returns.—Ib. Official announcement of result of election by canvassing boards is binding until set aside by court of competent jurisdiction.—State ex rel. Atty-Gen. v. Johnson, 35 Fla., 2, 16 So. Rep., 786.

Ibid.

244. Certificate of result of canvass.—They shall compile the result of the election, as shown by said inspector's returns, and shall then make and sign duplicate certificates containing in words and figures, written at full length, the whole number of votes given for each office, the names of the persons for whom such votes were given, for such office, and the number of votes given for each person for such office; such

certificate shall be recorded by the supervisor of registration in a book to be kept by him for that purpose, which book shall be furnished by the board of county commissioners and shall be labelled "Record of Election Returns," and one of such duplicates shall immediately be transmitted by mail or by express to the Secertary of State and the other to the Governor of the State.

The supervisor of registration shall transmit by mail to the Secretary of State, immediately after the county canvassing board shall have canvassed the returns for State and county officers, a list giving the names of all county officers elected, the office for which each was elected, with the post-office address of such county officers-elect, in their respective counties.

245. Supervisor of registration to give certificate to person elected.—In case any county officer shall be elected at any election, the supervisor of registration shall give to the person who shall be elected, a certificate of his election and the supervisor of registration shall give to any person desiring a copy of such returns from the record a certified copy thereof, or of such part thereof as may be desired, upon payment to him of the customary fees for copying and certifying papers in the office of the clerk of the circuit court. Ch. 4328, Acts 1895, Sec. 63.

246. When canvass made in certain counties.—For the counties of Monroe, Dade, Brevard, Manatee, Osceola and DeSoto, in case the returns of the election held in such counties shall not be received by the judge and supervisor of registration within six (6) days after the close of any election, the county canvass shall be made as soon thereafter as said returns shall be received by the county judge or supervisor of registration, and within twenty days after said election. Ib., Sec. 64.

247. Persons receiving highest number of votes elected. The person who shall receive the highest number of votes cast for one office shall be elected to such office. In case two or more persons shall receive an equal and the highest number of votes for the same office, another election therefor shall be held upon the order of the Governor as in other cases of special elections. Ib., Sec. 65.

248. Board of State canvassers.—On the thirty-fifth day after the holding of any general or special election for any State officer, member of the Legislature or representative in Congress, or sooner if the returns shall have been received from the several counties wherein elections shall have been held, the Secretary of State, the Comptroller and the Attorney-General, or any two of them, together with any other Ib., Sec. 66.

administrative officer of the executive department who may be designated by them, shall meet at the office of the Secretary of State, pursuant to notice to be given by the Secretary of State, and they shall be a board of State canvassers, and as such shall proceed to canvass the returns of said election and determine and declare who shall have been elected for such office, or as such member, as shown by such returns.

Ib., Sec. 66.

249. False and fraudulent returns.—If any such returns shall be shown or shall appear to be so irregular, false or fraudulent that the board shall be unable to determine the true vote for any such officer or member, they shall so certify and shall not include such returns in their determination, canvass and declaration. And the Secretary of State shall file and preserve in his office all such returns, together with such other documents and papers as may have been received by him, or by said board of canvassers. The said board of State canvassers shall canvass the returns for presidential electors, and representatives to the Congress of the United States separately and distinct from their canvass of the returns for the State officers and members of the Legislature.

Ib., Sec. 66.

250. What certificates to contain.—They shall make and sign separate and distinct certificates of the result of the election for national officers and for said State officers, which certificates shall contain in words written at full length the whole number of votes given for each person for each office and for member of the Legislature and State senator, and therein declare the result; which certificates, the one including the result of the election for presidential electors and representatives to Congress, and the other including the result of the election for State officers, members of the Legislature and State senators, shall be recorded in the office of the Secretary of State, in a book to be kept by him for that purpose. And the Secretary of State shall cause a certified copy of each of said certificates to be published once in one or more newspapers printed at the capital of the State.

Mandamus to State canvassers.—State ex rel. Bloxham v. Gibbs et al., 13 Fla., 55; Drew v. McLin et al., 16 Fla., 17; State ex rel. Bisbee v. Board of State Canvassers, 17 Fla., 29.

Ib., Sec. 67.

251. Secretary of State to make certificate and transmit to person elected.—The Secretary of State shall make and transmit to each person chosen to any State office, immediately after the State canvass, a certificate showing the number of votes cast for each person for such office, at such election; which certificate shall be prima facie evidence of his election to such office.

252. Presidential electors and representatives to Congress.—When any person shall be elected to the office of elector of President and Vice-President, or representative in the Congress of the United States, the Governor shall make out, sign and cause to be sealed with the seal of the State, and transmit to such person a certificate of his election to such office. Ib., Sec. 68.

Mandamus will not lie to compel the Governor to give a certificate of election to a person claiming to have been elected representative in Congress. —State ex rel. Bisbee v. Drew, Governor, 17 Fla., 67.

253. Blanks and forms, and election laws.—The Secretary of State is hereby required to cause to be prepared, all proper blanks and forms, for the use of inspectors of election and for county canvassers, conformable to the provisions of this chapter, and he shall, at least sixty days before any general election, transmit to the supervisor of registration of each county a sufficient number thereof for the several polling places in each election district within each county; and shall also have printed a sufficient number of the laws regulating general elections to supply the several counties and polling places in each election district in said counties, and transmit the same with the forms aforesaid; and the supervisor of registration in each county shall furnish to the inspectors of election at each polling place at each election district in such county, a sufficient number of such forms and copies of election laws for the use of such inspectors at the election. Ib., Sec. 69

254. Temporary change of polling place in case of an epidemic.—Nothing in this chapter shall be so construed as to prohibit the county commissioners in any county at any time, in case an epidemic shall exist in any city or town in such county, at the time of holding any election in such county, from establishing at any safe and convenient point outside of such infected locality, proper additional polling places for the electors resident in the infected district, at which polling places the electors of such infected district shall be allowed to vote, if properly qualified otherwise; and in such cases the registration books belonging to such infected district shall be applicable to and shall be used at such polling places thus established. Ib., Sec. 70

ARTICLE 2.

OF PRIMARY ELECTIONS.

Committee to call election and give notice. Sections.....255-256
Registration books to open. Section..... 257
Qualifications of electors. Section..... 258

Powers of committee. Section 259
Challenges. Section 260
Inspectors may require oath of persons offering to vote as to qualification. Section 261
Vote to be by ballot. Section 262
Report by officers holding election. Section 263
Second primary. Section 264
Oath of inspectors. Section 265
When inspectors appointed not present. Section 266
Sheriff to preserve order. Section 267
Expenses of primary election. Section 268
Inspectors selected as agreed upon by candidates. Section 269
Regulated by general election law. Section 270
Election to be called upon petition of majority of qualified electors. Section 271
When to be held. Section 272
Candidates not to be committeemen. Section 273
Contests. Section 274
Decision of committee final. Section 275
Names of successful candidates to be certified to proper committee. Section 276
Primary election in municipality. Section 277

255. Committee to call primary election and give notice. Whenever the State executive or standing committee of any political party in this State or any congressional district or county of this State, shall decide to take by primary election the sense of the members of said party as to the proper persons to be made delegates to any convention to be held for the purposes of that party, or to take the sense of the members of said party as to their choice for United States senator, or as to the proper person or persons to be presented on behalf of that party to the voters of the State, congressional district or county, as the case may be, at any election to be held in the several counties under the laws of this State, at least thirty (30) days notice shall be given in some newspaper published in the county or counties in which such election is to be held, or by posting a notice of such primary election in each ward or precinct of the county, if there be no newspaper published in said county, of the place where the voters belonging to that party are requested to meet for the purpose of acting in relation to the nomination of delegates or candidates as hereinabove stated.

Ch. 5014, Acts 1901, Sec. 1.

256. What notice shall state.—Such notice shall also state the day on which such election is to be held, and the hours within which it is to be held, and the names of the inspectors appointed to hold such election and receive the votes that may be cast thereat, and make report and return thereof, and the time when such return and report shall be made to the committee directing such meeting to be held.

Ib., Sec. 1.

257. Registration books to open.—Whenever the State, congressional or county committee of any political party

Ch. 5249, Acts 1903, Sec. 1.

which in the last preceding election cast forty per cent. of the votes cast, shall have called a primary election to be held prior to the time for the registration for a general election, the registration books of each county shall be open in each election district for four weeks for registration for such primary.

In counties of thirty thousand or more population by the last census the books shall be closed four weeks before the primary and in other counties two weeks before the primary.

258. Voters must be qualified electors.—No person can vote or take part in the proceedings of any primary election who is not by the laws of the State a lawful elector, who has not paid his poll tax legally due not less than ten days before such primary election is held, and authorized to vote in any legal election in the ward or precinct for which such primary election is held. Ch. 5014, Acts 1901, Sec. 2.

259. Powers of committees.—The executive or standing committee calling such primary election may declare the terms and conditions on which legal electors offering to vote at such election shall be regarded and taken as proper members of the party at whose instance or in whose interest such primary election has been called or may be held, and therefore entitled to vote at such election as a member of that party. Ib., Sec. 3.

260. Challenges.—Any recognized member of the party in whose interest such election is held may challenge the right of any person offering to vote at such election, and the inspectors authorized to hold and holding such election shall determine on the evidence then furnished whether the person so offering is entitled to vote at such election, and shall receive or reject such votes so offered as to them the evidence for or against the right of the persons so offering to vote shall reasonably warrant. Ib., Sec. 4.

261. Inspectors may require oath of person offering to vote as to his qualifications.—The inspectors holding such primary election under the provisions of this article may of their own motion, or in any case of the challenge of any person offering to vote, if they deem there is any doubt of the propriety under the provisions of this chapter, of the vote so offered, require of the person so offering to vote his oath to the fact which authorized the vote, and if the person so offering to vote declines to make oath so demanded, his vote shall be rejected. Ib., Sec. 5.

262. Vote to be by ballot.—All votes at such primary elections shall be by ballot, which ballot shall conform to the requirements of the general election law of this State. Ib., Sec. 6.

Ib., Sec. 7.

263. Report to the committee by the officers holding primary election.—The report to the committee so directing such primary elections by the officers holding the same shall be in writing, with which the original ballots shall be returned and the poll list of the voters made at the time of the voting, and the reasons on which any challenged vote was received or rejected. Said committee shall carefully examine the returns and reports so made and thereupon decide who have been chosen by the majority vote cast in the primary election for delegates to the convention, and from what ward or precinct, if the meeting were for the appointment of delegates to such convention, or what person or persons by a majority vote have been elected as candidates of the party, as the case may be, for the office or offices to be filled at the approaching election.

Ib., Sec. 7.

264. Second primary.—When held.—A second primary election shall be held within four weeks after the first primary election, to choose in all cases where no person shall have received a majority of all votes cast for the several candidates receiving the highest vote in the first primary election.

When several officers are to be voted for for the same office, as in the case of county commissioners, a number of candidates not exceeding twice the number not nominated in the first primary shall be voted for in the second primary and those candidates receiving the highest vote in the second primary of the number remaining to be chosen shall be considered chosen.

Ib., Sec. 9.

265. Oath of inspectors and penalty for violation.—The inspectors who may hold such primary election under this act, and return the votes, proceedings and actions thereof, herein provided, shall, before assuming the duties, make oath before some officer authorized to administer an oath, and in the absence of such officer the inspectors shall administer the oath to each other, that they will honestly, faithfully and to the best of their ability do and perform all the duties of their respective offices; and any willful violation of said oath or of any other oath taken under the provisions of this article, shall be held to be perjury, and shall be punished as provided by the laws of the State for the crime of perjury.

Ib., Sec. 9.

266. When inspectors appointed not present.—At any primary election ordered by any county executive committee or standing committee, where the inspectors appointed shall not be present from any cause, the members of the party present may appoint from their number a full set of inspectors and clerk, who shall swear themselves in and

proceed to hold such election ordered the same as if regularly appointed.

267. Sheriff to preserve order.—The sheriff is required to see that good order is preserved at such meetings, and may arrest and present for commitment to the nearest officer clothed with the power of a justice of the peace, any and all persons who may be guilty of any violation of the provisions of this act. Ib., Sec. 9.

268. Expenses of primary election.—The county executive or standing committee of the political party calling such primary elections is hereby authorized to regulate the amount to be paid the inspectors and clerk of such election, and to provide funds for defraying expenses of conducting such elections by assessing the various county candidates for nomination at such primary election: Provided, That when any candidate for United States senator or any State officer or member of Congress is a candidate before such primary, then the State executive committee or the congressional committee shall regulate the amount to be assessed such candidate or candidates, and pro rate the money so collected among the several counties in which such primaries are to be held, and pay the same over to the county executive committes of the several counties to assist in defraying the expenses of such primaries: Provided, That no candidate shall be assessed more than five per cent. of the annual compensation of the office for which he is a candidate. Ib., Sec. 10.

269. Inspectors to be selected as agreed upon by candidates.—In the appointment of inspectors and clerks of such primary election, the committee making such appointments shall, so far as possible, select qualified voters from a list of names agreed upon by a majority of the candidates before such primary election: Provided, Such agreed list is filed with the committee. Ib., Sec. 11.

270. Regulated by general election law. — Except as herein provided, all elections at primary elections under this article, shall be regulated by the election law of the State in force at the time such primary election is held as nearly as the same can be done. Ib., Sec. 12.

271. Committee to call election on petition of majority of qualified electors.—The executive or standing committee, when they are petitioned by a majority of the qualified electors of the same party the committee belongs to, shall call and cause to be held a primary election as provided for in this article. Ib., Sec. 13.

Ib., Sec. 14.

272. All primary elections of the same party held on the same day.—The primary elections of a political party for all purposes shall be held throughout the State on the same day, but the primary elections for different political parties may be held on separate days. Such primary elections shall be held not less than sixty days before the date for the general election.

Ib., Sec. 15.

273. Candidate not to be committeeman.—How vacancy filled.—No county, State or congressional committeeman who is a candidate before any primary election shall act or serve as such committeeman, and any vacancy caused by such disqualification may be filled by the county, State or congressional committee, as the case may be.

Ib., Sec. 16.

274. Contests.—The county executive or standing committees shall hear and determine all contests or protests filed by any county candidate before such primary election, and when any contest or protest is filed with the county committee challenging the returns from any precinct or objecting to any decision of the county committee, such county committee shall hear and determine such protest or contest, preserving in writing all the evidence heard and considered, and all rulings and decisions made by said committee.

Ib., Sec. 16.

275. Decisions of committee final.—The decisions and rulings of the county committee shall be final as to any county candidate before such primary. If any candidate for a State or congressional office is not content with the decision of the county committee affecting his candidacy in said county, said candidate shall file within twenty days after the result is declared, with the chairman of the State or congressional executive committee, as the case may be, his protest as to the result of the election in any county; whereupon the chairman of the State or congressional executive committee shall, after the filing of such protest, cause notice of such protest to be given to the county executive committee wherein irregularities are alleged to exist, whereupon it shall be the duty of such county committee to immediately forward a certified copy of such evidence submitted to and considered by them, and their rulings and decisions thereon to the State or congressional committee, as the case may be, and such committee shall review the finding and decisions of the county committee and its decisions shall be final.

Ib., Sec. 17.

276. Names of successful candidates to be certified to proper committee.—The chairman of the State or congressional committee, as the case may be, shall cause the names of the successful candidates for offices voted for in more

than one county who were chosen by a majority vote to be certified to the county committee of each county of the State, and said committee shall certify the same to the county commissioners of said county, to be placed on the official ballot at the general election.

277. Primary election in municipality.—Whenever any political party in any municipality in this State shall have determined by its city committee, or in the absence of a city committee, then by its county committee to hold a primary election for the nomination of candidates for city offices, such primary election shall be held in all respects in conformity with the provisions of this act, so far as said provisions can be made to apply. In any case where there is no city committee of the political party within any city where a primary election is to be held the county committee for such county shall make provision for and designate a city committee to serve until their successors shall be elected at the city primary. The city committee shall call and make all necessary regulations for the holding of such primary to the same extent that county committees are authorized to do under the provisions of this article.

Ib., Sec. 18, as amended by Ch. 5471, Acts 1905.

ARTICLE 3.

OF CONTESTING ELECTIONS.

278. (194.) Contest of seat in Legislature.—If any candidate of the proper county or district contest the election of any senator or member of the House of Representatives of this State, he shall give notice thereof in writing to the person whose election he contests, or leave written notice thereof at the house where such person has last resided with some person over fourteen years of age, such person being a member of the family residing in such house, or residing with such family, within twenty-five days after the canvass by the State canvassing board of the returns of such county, expressing in said notice the points on which the same shall be contested, and the name of the county judge or clerk of the circuit court who will attend at the taking of depositions, and where and when such depositions will be taken.

Chap. 38, Art. 10, Secs. 1 and 5, Dec. 29, 1845; Ch. 3307, March 7, 1881.

279. (195.) Both parties may take depositions.—The party whose election is contested, as well as the contestant, may take depositions before either of said officers, upon reasonable notice to the adverse party.

Ch. 38, Art. 10, Sec. 2, Dec. 29, 1845.

Ib., Sec. 3.

280. (196.) Issuance of subpoenas and attachment of witnesses.—Any county judge or clerk, who may be called upon to do so, shall issue subpoenas to compel the attendance of any witness residing within his county, to give testimony at the time and place mentioned in such subpoena; and if necessary, may compel the attendance and testifying of such witnesses by attachment.

Ib., Sec. 4.

281. (197.) Writing and transmission of deposition.—The officer taking any such deposition shall reduce the same to writing; either party may examine or cross-examine any witness, and require his answers to be taken down, if pertinent to the points in contest; the officer taking the deposition shall certify the same, and transmit it to the presiding officer of the proper house.

282. (198.) Limit of time for taking testimony.—No testimony shall be taken at the instance of either party after the meeting of the Legislature, unless authorized by resolution of the house in which such contest shall be pending.

Ib., Secs. 7 and 8.

283. (199.) Contest of election to certain county offices. The election of any person to the office of county judge, clerk of the circuit court, sheriff, county treasurer, county assessor of taxes, tax collector, county superintendent of public instruction, justice of the peace or constable, may be contested before the circuit court of the county in which such election was held by any person claiming to be elected to such office, as follows:

Such contestants shall, within twenty-five days after the canvass by the county canvassing board of the election returns of such office, file a petition in the office of the clerk of said court, and serve a copy thereof on the contestee by delivering the same to him or leaving the same at the house where he has last resided, with some person over fourteen years of age, such person being a member of the family, residing in such house or residing with such family. He shall set forth in his petition the particular grounds on which he intends to rely to establish his right to such office. The contestee shall file his answer within twenty-five days after such service of copy, and if he fail so to do the contestant may proceed in the matter ex parte. The judge of said court shall proceed in a summary way to hear and determine the matter without a jury and to give judgment therein either in or out of term.

Ib., Sec. 10.

284. (200.) Testimony, how taken.—Testimony may be taken before the court or judge thereof or before any person or persons whom such judge shall appoint as commis-

sioner or commissioners to take such testimony. Such commissioner shall have like powers and proceed after the manner of an examiner in chancery. Upon application of either party, commissions may also issue and depositions be taken as in other cases on the common law side of the court.

285. (201.) Judgment of ouster, commission, costs.—If the petitioner shall be found to be entitled to such office and the adverse party has been commissioned or has entered upon the duties thereof or is holding the same, judgment of ouster shall be pronounced against such party; and upon presentation of a certified copy of such judgment to the Governor he shall revoke such commission, and he shall commission the person found in the judgment of the court to be entitled to the office, upon such person complying with all the laws of the State to entitle him to receive such commission. Ib., Sec. 9.

286. (202.) Appeal, etc.—Writ of error from the Supreme Court shall lie as in other cases on the common law side of the court and with like procedure.

287. (203.) Quo warranto not abridged.—Nothing in the foregoing sections shall be construed to abrogate or abridge in any way any remedy that may now exist by quo warranto, but in such case the proceeding by petition hereinbefore provided shall be taken to be an alternative or cumulative remedy.

ARTICLE 4.

OF PRESIDENTIAL ELECTORS.

288. (204.) To meet and perform duties.—The electors of President and Vice-president who shall be chosen, shall, at 12 o'clock on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this State, and shall then and there perform the duties enjoined upon them by the Constitution and laws of the United States. Ch. 71, Sec. 6, Jan. 6, 1847.

289. (205.) Penalty for misconduct.—The several persons who shall be appointed to conduct the election of electors of President and Vice-president of the United States, shall, for neglect of duty or for improper conduct, be liable to the same penalties and forfeitures as are or may be provided by law for regulating elections in this State. Ib., Sec. 7.

290. (206.) Meeting of electors and filling of vacancies. Each elector of President and Vice-president of the United Ib., Sec. 8.

States, shall, before the hour of 12 o'clock on the day next preceding the day fixed by the law of Congress to elect a President and Vice-president of the United States, give notice to the Governor that he is at the seat of government, and ready at the proper time to perform the duties of elector; and the Governor shall forthwith deliver to the electors present a certificate of the names of all the electors; and if, on examination thereof, it should be found that one or more of said electors are absent, and shall fail to appear before ten o'clock in the morning of the day of election of President and Vice-president as aforesaid, the electors then present shall immediately proceed to elect by ballot, in the presence of the Governor, a person or persons to fill such vacancy or vacancies as may have occurred through the non-attendance of one or more of the electors.

Ib., Sec. 9.

291. (207.) Plurality of votes to fill vacancy.—Proceedings in case of tie.—If any more than the number of persons required to fill the vacancy or vacancies as aforesaid shall have the greatest and an equal number of votes, then the election of those having such equal and highest number of votes shall be determined by lot to be drawn by the Governor in the presence of the electors attending; otherwise, he or they, to the number required, having the greatest number of votes, shall be considered elected to fill said vacancy or vacancies.

Ib., Sec. 10.

292. (208.) Person elected to fill vacancy to perform duties of elector.—Immediately after such choice is made in manner aforesaid, the name or names of the person or persons so chosen shall forthwith be certified to the Governor by the electors making such choice, and the Governor shall cause immediately notice in writing to be given to such and every elector chosen to fill such vacancy or vacancies as aforesaid; and the said person or persons so elected and notified, and not the person or persons in whose place he or they shall have been chosen, shall be electors, and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on him or them as electors as aforesaid by the Constitution and laws of the United States and of this State.

Ib., Sec. 11.

293. (209.) In case of vacancy in the office of President or Vice-president.—Whenever the office of President and Vice-president of the United States shall both become vacant, it is hereby declared to be the duty of the Governor of this State for the time being, upon receiving a notification of such vacancy from the Secretary of State of the United States, or other proper officer, forthwith to issue his proclamation directing an election for electors of President and Vice-presi-

dent of the United States as herein prescribed for holding the regular and stated elections thereof; and the electors elected under this section shall meet at the seat of government and discharge all and singular the duties enjoined on electors of President and Vice-president of the United States by the Constitution and laws of the United States, and of this State.

294. (210.) Compensation of electors.—Each and every elector who shall attend as an elector at the seat of government as aforesaid, shall be entitled to receive three dollars for each and every day's attendance, and ten cents for every mile of travel of the estimated distance by the most usual route from his place of residence to the seat of government, and the like sum for returning; which sum shall be allowed by the Comptroller, on the certificate of the Governor, and paid by the Treasurer out of any moneys in the treasury not otherwise appropriated. Ib., Sec. 12.

CHAPTER II.

OF OFFICES AND OFFICERS.

ARTICLE 1.—Of persons eligible to office. Section..... 295
2.—Of commissions. Sections.....296-297
3.—Of vacating office. Sections.....298-301
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ARTICLE 1.

OF PERSONS ELIGIBLE TO OFFICE.

295. (211.) Conviction of certain offences to exclude from office.—All persons convicted of bribery, larceny, perjury, or any other infamous crime, or who shall make or become directly or indirectly interested in any bet or wager, the result of which shall depend upon any election, or who shall hereafter fight a duel, or send or accept a challenge to fight, or who shall be second to either party, or be the bearer of such challenge or acceptance, shall be excluded from every office of honor, power, trust or profit, civil or military, within this State, and from the right of suffrage; but the legal disability shall not accrue until after trial and conviction by due form of law: Provided, however, That nothing in this article shall be so construed as to remove or affect any punishment or legal disability resulting from convictions heretofore. Ch. 3705, Secs. 1 and 3, June 3, 1887.

ARTICLE 2.

OF COMMISSIONS.

Ch. 227, Acts 1849, Sec. 1, as amended by Ch. 5178, Acts 1903, Sec. 1.

296. (212.) No commission to issue until bond filed, etc. No commission shall be issued by the Governor of this State to any person who is by law required to give bond before he shall enter upon the duties of his office until after such bond shall have been duly executed, approved and filed in the office where it is required by law to be deposited, and official notice thereof given to the Governor. There shall be hereafter paid by or on behalf of any person appointed or elected to office the sum of one dollar to be paid in current money of the United States before the issuing of any commission.

Ch. 12, Sec. 2, Acts 1845.

297 (213.) Record of commission, oath and acceptance. Every commission issued by the Governor shall be recorded in the office of the Secretary of State in a book of commissions and an index made thereof, and the oath of office of the person named in said commission shall be endorsed on said commission, and accompanying the commission there shall be transmitted to each officer a printed acceptance of said commission, and his oath of office, which shall be subscribed and taken by such officer, and returned to the office of the Secretary of State and filed therein, and a note thereof made on the record of said commission by the Secretary of State.

ARTICLE 3.

OF VACATING OFFICE.

Ch. 1633, Acts 1868, Sec. 1.

298. (214.) Office deemed vacant in certain cases.— Every office shall be deemed vacant in the following cases:

First. By the death of the incumbent.

Second. By his resignation.

Third. By his removal.

Fourth. By his ceasing to be an inhabitant of the State, district, county, town or city for which he shall have been elected or appointed.

Fifth. By his neglect or refusal to qualify according to law within sixty days after his election or appointment, or by his refusal to accept the office.

Sixth. When any office created or continued by the Constitution or laws shall not have been filled by election or appointment under the Constitution or law creating or continuing such office.

Seventh. The conviction of the incumbent of any felony, or an offence involving a violation of his official oath.

Eighth. The decision of a competent tribunal declaring void his election or appointment, and his removal by said tribunal.

Ninth. The Governor may also declare vacant the office of every officer required by law to execute an official bond, when a judgment shall be obtained against such officer for the breach of the condition of such bond.

Tenth. If any officer shall be required by law to give a bond in the performance of any duty of his office, and shall fail so to do, the Governor may declare the office vacant.

299. (215.) Absence from State of certain officers.—When any administrative officer of the executive department shall desire to absent himself from the State he shall be permitted to do so upon notifying the Governor in writing of such intention, but he shall return to the State and to the performance of his duties whenever requested by the Governor to do so, and upon his failure so to do the Governor may declare his office vacant and may fill the same as provided by law. Ch. 1749, Acts 1870.

300. (216.) Administrative officers of executive department not to absent themselves.—The Secretary of State, the Attorney-General, Comptroller, Treasurer, Superintendent of Public Instruction and Commissioner of Agriculture shall reside at the capital of the State; and, without the consent of the Governor and a majority of his cabinet, no member of said cabinet shall absent himself for a longer period of time than thirty days. And in case any incumbent shall fail to comply with and observe the requirements hereof, it shall be deemed an abandonment and vacation of the office, and the Governor may fill such vacancy and office according to law. Ch. 1845, Acts 1871.

301. (217.) Filling vacancies.—In all such cases, and in all other cases in which a vacancy may occur, if the office be a State, district or county office (other than a member or officer of the Legislature), it shall be the duty of the Governor to fill such office by appointment, and the person so appointed shall be entitled to take and hold such office until the same shall be filled by an election as provided by law, and in cases requiring the confirmation or the advice and consent of the Senate, the person so appointed may hold until the end of the next ensuing session of the Senate unless an appointment be sooner made and confirmed and consented to by the Senate. Ch. 1633, Acts 1868, Sec. 2.

ARTICLE 4.

OF NOTARIES PUBLIC.

Sep. 13, 1822, Ch. 4544, Acts 1897, Sec. 1.

302. (218.) Appointment, term of office, powers, bond and oath.—The Governor is empowered to appoint as many notaries public as to him shall seem necessary; and upon the death, removal or resignation of any such notaries public, to appoint others in his or their room, which said notaries public shall hold their respective offices for four years, and shall use and exercise such office of notary public for such places and within such limits and precincts as the Governor shall direct, to whose protestations, attestation and other instruments of publication due credence shall be given. Every notary public shall, previous to his executing the duties of said office, give bond to the Governor for the time being, in the penalty of five hundred dollars, conditioned for the due discharge of his said office, and also take an oath that he will honestly, diligently and faithfully discharge the duties of a notary public. Said bond shall be approved and filed in like manner and place as the bonds of county officers of the county in which the person so appointed notary public shall reside.

Ch. 4742, Acts 1899, Sec. 1.

303. Women eligible.—Women over twenty-one years of age are hereby declared to be eligible to appointment by the Governor as notaries public, and to hold and exercise the office thereof upon the same terms and conditions, and with the same powers and emoluments, as notaries now appointed by the Governor.

Sept. 13, 1822.

304. (219.) May administer oaths.—In all cases where it may be necessary to the due and legal execution of any writing or document whatever to be attested, protested or published under the seal of his office, any notary public may administer an oath, and make certificate thereof, which shall have the same effect as if administered and certified by a justice of the peace; and any person making a false oath before a notary public shall be guilty of perjury in like manner as if the same was made before any justice of the peace of this State, and be subject to the like penalties, forfeitures and disabilities as are prescribed by law in cases of willful and corrupt perjury.

Ch. 1127, Acts 1861, Sec. 2.

305. (220.) May solemnize marriages and take acknowledgments.—Notaries public are authorized to solemnize the rites of matrimony, and to take renunciation and relinquishment of dower, and the acknowledgments of deeds and other instruments of writing for record, as fully as justices of

the peace and other officers of this State are; and for so doing they shall be allowed the same fees as allowed by law to other officers for like services.

306. (221.) Fees.—The fees of notaries public shall be as follows: For protesting bills of exchange, promissory notes, noting protest of captain of vessel and all other papers necessary to be protested, both for non-acceptance and non-payment, including the entering and registering of same, issuing certificates with seal, all necessary notices and postage and each and every act necessary to perfect such protest, shall be two dollars. Administering each oath, ten cents. Attending at a demand, tender or deposit and noting the same, one dollar. Each certificate with seal thereto, fifty cents. Each order for survey, fifty cents. Copying any paper necessary to be copied, the same as allowed clerks of the circuit court. Ch. 3874, Acts 1889.

307. Validity of acts prior to first day of April, 1903.—Any and all notarial acts that were done by any notary public in the State of Florida prior to the first day of April, 1903, which would have been valid had not the term of office of the notary public expired, are hereby declared to be valid. Ch. 5217, Acts 1903, Sec. 1.

308. Must state time of expiration of commission.—It shall be the duty of every notary public in the State of Florida to add to his or her official signature to any acknowledgment taken before, or certificate made before him or her, relating to or affecting the sale, mortgage, transfer or assignment of any interest in and to any real or personal property, a statement of the time of the expiration of his or her commission as such notary public in words and figures as follows: "My commission expires ..... (Herein insert the date when commission expires). Ch. 5218, Acts 1903, Sec. 1.

ARTICLE 5.

OF COMMISSIONERS OF DEEDS.

309. (222.) Appointment and power to take acknowledgments.—The Governor is hereby authorized to name, appoint and commission one or more commissioners in each of such of the States and Territories of the United States, the District of Columbia, and in any foreign country, as he may deem expedient; and such commissioner shall continue in office for four years, and shall have authority to take the acknowledgment and proof of the execution of any deed, mortgage or other conveyance of any lands, tenements or Jan. 28, 1831, Sec. 1; Ch. 4757, Acts 1899, Sec. 1.

hereditaments lying or being in this State, and any contract, letter of attorney, or any other writing under seal to be used or recorded in this State, and such acknowledgment or proof taken or made in the manner directed by the laws of this State and certified by any one of the said commissioners before whom the same shall be taken or made under his seal, which certificate shall be endorsed on or annexed to said deed or instrument aforesaid, shall have the same force and effect, and be as good and available in law for all purposes, as if the same had been made or taken before the proper officer of this State.

Jan. 28, 1831, Sec. 2.

310. (223.) May administer oaths.—Every commissioner appointed by virtue of this act shall have full power and authority to administer an oath to any person who shall be willing and desirous to make such oath before him, and such affidavit made before such commissioner shall be as good and effectual to all intents and purposes as if taken by any magistrate resident in this State and competent to take the same.

Ib., Sec. 3.

311. (224.) Oath of office.—Every commissioner appointed as aforesaid before he shall proceed to perform any duty under and by virtue of this law shall take and subscribe an oath before a notary public or justice of the peace in the city or county in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of this State, which oath shall be filed in the office of the Secretary of State.

Ch. 4757, Acts 1899, Sec. 4.

312. Official acts validated.—Any and all official acts heretofore done by any commissioner of deeds, whose commission is more than four years old are hereby declared valid.

TITLE V.

OF EDUCATION.

CHAPTER I.

ARTICLE 1.—Of common schools and county high schools. Sections....313-352
2.—Of teachers' examinations. Sections.....353-378
3.—Of duties and powers of teachers. Sections.....379-385
4.—Public high schools and rural graded schools. Sections...386-398
5.—Special tax school districts. Sections.....399-416

ARTICLE 1.

COMMON SCHOOLS AND COUNTY HIGH SCHOOLS.

General provisions. Sections.....313-334
State Board of Education. Sections.....335-340
County boards. Sections.....341-345
Treasurer of county boards. Section..... 346
Duties of county boards. Sections.....347-348
County school board districts. Section..... 349
Vacancies. Section 350
Duties of county superintendent. Section..... 351
Duties of supervisors. Section..... 352

313. (225.) Uniform system of public instruction. School age.—There shall be established and maintained a uniform system of public instruction free to all the youth residing in the State between the ages of six and twenty-one years, as far as the funds will admit, as hereinafter provided. Ch. 3872, Acts 1889, Sec. 1.

314. School year.—The school year for all public schools shall begin on the first day of July and end with the last day of the following June, and all reports, financial and otherwise, to the State department shall embrace such business and matters only as take place within the limits of the school year thus defined. Ch. 4196, Acts 1893, Sec. 1.

315. When schools may begin.—No school in any county shall begin before July 1st of the school year to which that term of school belongs and for which the apportionment was made. Ib., Sec. 4

Ib., Sec. 2.

316. Opening and closing.—The time for the opening public schools for each county shall be determined by the county board of public instruction: Provided, That all schools must begin so as to close before the last day of June.

Ch. 4195, Acts 1893, Sec. 1.

317. School day, month, term and year.—A school day shall comprise not less than five hours nor more than six hours, exclusive of recesses. The time to be fixed by the board of public instruction of the county.

A school month shall consist of twenty days, exclusive of the first and last days of the week.

A school term contains four school months.

The school year contains two terms.

Ch. 4292, Acts 1901, Secs. 1 and 3, amending Sec. 256, Rev. Stats. 1892.

318. Vacation and holidays.—All public schools shall observe the period from December 24 to January 1, both days inclusive, as a vacation, and Independence day and Thanksgiving day as holidays, and no one of these days shall be counted as taught in a teacher's monthly report.

(State aid for public schools: See Ch. 5381, Appendix).

Ch. 3872, Acts 1889, Sec. 39.

319. (262.) Duty of State Treasurer.—The treasurer of the board of education shall keep an account with the several counties, in which he shall credit each county with its proportion of its income of the common school fund, and of the fund raised by the one mill tax authorized by the Constitution, and shall charge each with the amount receipted for by the treasurers of the boards of public instruction.

Ib., Sec. 40.

320. (263.) Duty of tax collector.—The several tax collectors shall receive only the current funds of the United States in payment for all taxes provided for in this article, except such certificates of indebtedness as may be issued by the county boards of public instruction, which shall be receivable for county school taxes.

Ib., Sec. 43.

321. (264.) To whom school funds to be paid.—Every officer having moneys which by law go to the State school fund shall pay the same to the State Treasurer, and every officer having moneys which by law go to the county school fund shall pay the same to the county treasurer.

Ch. 4332, Acts 1895, Sec. 1.

322. Duty of county treasurer.—It shall be the duty of the treasurer of the school fund of each county in this State by the first Monday in each and every month, to prepare and file with the county superintendent of public instruction of his county, a detailed and itemized statement in writing, showing all the sums of money received by such treasurer

during the month next preceding, and from whom and from what source received, and all amounts by him paid out during such time and to whom paid, and describing by date, number and amount, all warrants paid.

323. Clerk to prepare reports.—The financial statement of accounts herein provided for, when filed with the clerk of the circuit court, shall be securely kept by him and shall at all times be open to the examination and inspection of the people of the county without fee or charge. Ib., Sec. 4.

324. Purchase of real estate for educational purposes.—The board of county commissioners of any county in this State upon the request of the board of public instruction in such county, after an affirmative vote of the qualified voters who are taxpayers therein and have paid all taxes due by them for two years next and preceding said election in any special tax school district, or county, are hereby authorized to contract debts for the purchase of real estate to be used for educational purposes for the erection of school buildings and to pay such debts out of the current income of any year, or out of the income of succeeding years, and are authorized to borrow money, from time to time, as occasion may require to discharge any debt or liability incurred for the purchase of real estate for such purpose, which debt shall be a charge or lien only upon such special tax school district or county as the case may be: Provided, That the necessary expenses of maintaining the schools in any county during any year shall constitute the first claim against the school fund of that year. Ch. 4682, Acts 1899, Secs. 1 and 2, Revised.

325. (258.) Attendance by youth of one county of school in another.—When it is more convenient for youth residing in one county to attend school in an adjoining county, they may do so by the concurrence of the superintendents of public instruction of the two counties. The proportion of school money for each youth shall be transferred by requisition of the county superintendent of public instruction of the county in which the youth resides, upon the treasurer of the school funds of that county to the treasurer of the school funds of the county in which the school is located. Ch. 3872, Acts 1889, Sec. 35.

326. (259.) Forfeiture by county of school funds.—Any county or school district neglecting to establish and maintain such school or schools as the available funds will support, shall forfeit its proportion of the common school fund during such neglect, and in that case all moneys so forfeited shall be apportioned among the several counties at the next annual apportionment. Ib., Sec. 36.

Ch. 4196, Acts 1893, Sec. 3. As amended by Ch. 5386, Acts 1905.

327. Forfeiture by school of school funds.—Any public school in the county failing to complete its public term before the termination of the school year, shall, if such lost time of such term be not made up within the next school year thereafter, forfeit the proportion of its financial apportionment not used by neglecting or failing to maintain a school for the full term of school in that county, and in that case all moneys so forfeited shall be apportioned among the several schools of the county at the next annual apportionment.

Ch. 3872, Acts 1889, Sec. 2.

328. (226.) Officers.—The officers of the department of public instruction shall be a State Superintendent of Public Instruction, a State Board of Education, a board of public instruction for each county, a superintendent of public instruction for each county, local school supervisors and treasurers.

329. (227.) Board of public instruction.—A board of public instruction shall consist of not more than three (3) members, no two of whom shall reside in the same district.

330. (229.) Regulations.—Terms and removal of officers. All such officers who shall hold their offices by statutes shall conform to the regulations of the department of public instruction.

Ch. 3872, Acts 1889, Sec. 6.

331. (230.) No officer to vote on his own compensation. No officer shall vote on a question fixing his own compensation.

Ib., Sec. 7.

332. (231.) Majority a quorum.—A majority of any educational board shall constitute a quorum for the transaction of business.

Ib., Sec. 8.

333. (232.) Certain officers to qualify and give bond. Disposition of moneys and property.—Every school officer who shall be elected or appointed under statutory provisions, is required:

First.—Before entering upon the duties of his office, and within ten days after receiving notice of his appointment, to subscribe to an acceptance of the appointment and to pledge that he will faithfully perform the duties of the position, and to forward the same with his postoffice address to the State Superintendent of Public Instruction.

Second.—Before receiving any school moneys or property of any kind, for safe keeping or disbursement, to give bond with two good sureties, the bonds to be fixed and approved by the board of public instruction for the county, the original to be filed in the office of the clerk of the circuit court,

and a certified copy to be held by the officer giving the security to be produced when required.

Third.—Any officer in charge of school moneys, or property to be so disbursed, shall satisfy himself that the officer to whom he issues it has given bond as aforesaid, or be personally liable for any loss in consequence of such neglect.

334. (233.) Officer to turn over moneys and property to successor.—Every officer shall turn over to his successor in office, on retiring, all books, papers, documents, funds, moneys and property of whatever kind, which he may have acquired, received and held by virtue of his office, and take full receipt for them of his successor. Ib., Sec. 8.

335. (234.) State Board of Education.—The State Board of Education shall consist of the Governor, the Secretary of State, the Attorney-General, the State Treasurer and the State Superintendent of Public Instruction. The Governor shall be the president, the State Treasurer shall be the treasurer, and the State Superintendent of Public Instruction the secretary of said board. Said board is a body corporate with full power to perform all corporate acts for educational purposes. Ib., Sec. 9.

336. (235.) Powers and duties of State board.—The State Board of Education are directed and empowered: Ib., Sec. 10.

First.—To obtain possession of and take the charge, oversight and management of all lands granted to or held by the State for educational purposes, and to fix the terms of sale, rental or use of such lands, and to do whatever may be necessary to preserve them from trespass or injury, and for their improvement.

Second.—To have the direction and management, and provide for the safe keeping and expenditure of all the educational funds of the State, with due regard to the highest interests of education.

Third.—To entertain and decide upon questions and appeals referred to them by the State Superintendent of Public Instruction on any matter of difference or dispute arising under the operation of law, and to prescribe the manner of making appeals and conducting arbitrations.

Fourth.—To remove any subordinate officer in the department for incompetency, neglect of duty or other cause which would disqualify a person for the appointment.

Fifth. To keep in view the establishment of schools on a broad and liberal basis, the object of which shall be to impart instruction to youth in the professions of teaching, in the knowledge of the natural sciences, the theory and practice

of agriculture, horticulture, mining, engineering and the mechanic arts, in the ancient and modern languages, in the higher range of mathematics, literature, and in the useful and ornamental branches not taught in common schools.

Sixth.—To co-operate with the State Superintendent of Public Instruction in the management of the department, and in the general diffusion of knowledge in the State.

Ch. 1776, Acts 1870, Sec. 7.

337. (286.) Agricultural land script.—The trustees are hereby authorized to claim and receive from the Secretary of the Interior the agricultural college land script to which this State is entitled by act of Congress July 2, 1862, and acts supplemental thereto. Said script is hereby transferred and assigned to and vested in the Trustees of the University of Florida and their successors and assigns forever. They shall, when in their judgment it will best promote the object for which they are chosen, sell and assign the script, or locate and thereafter transfer and convey the lands, and use the proceeds as herein directed.

(See Ch. 5384, Appendix.)

Ch. 1490, Acts 1866, Sec. 1.

338. (324.) Lands not to be sold on credit.—Credit shall not be allowed for the purchase money on the sale of any of the school or seminary lands of this State, but every purchaser of such lands shall, at the time of purchase, make complete payment therefor.

Ch. 5261, Sec. 1, Acts 1903.

339. Trustees may investigate disease among domestic animals.—Veterinarian.—The Board of Trustees of the University of Florida is hereby authorized and empowered to investigate diseases among domestic animals, to prescribe rules and regulations for such investigations, and to adopt such methods as will prevent the spread of contagious diseases among such. Said board is hereby authorized to employ an agent, to be known as "Veterinarian," who shall be a graduate of a veterinary college, and shall have had at least five years' experience in the practice of veterinary medicine, and who has made original investigations in veterinary science, to require of such veterinarian such duties.

Ib., Sec. 2.

340. May make rules and regulations in reference thereto.—The said board of trustees shall have the same power to promulgate rules and regulations and to enforce the same concerning segregation and quarantine of domestic animals when they have reason to believe that they are infected with any contagious disease or in any danger of conveying it to other animals, as is now by law conferred upon the State health officers concerning persons. The duties and powers

in one or another of said county school board districts; and the members of the county board of public instruction shall file in the office of the clerk of the circuit court for such county a certificate of their said action, containing a description of the boundaries of said districts, and naming the election districts comprising each county school board district, which certificate shall be published in a newspaper published in the county, or if there be no newspaper published in the county, then by posting at the county court house door for four weeks thereafter.

The county board of public instruction may thereafter change the boundaries of any such districts at a meeting in July of the year of a general election, but such change shall be certified in the clerk's office and published as required for fixing such districts in the first instance.

350. Vacancies.—How filled.—All vacancies on said board of public instruction shall be filled for the unexpired term by appointment by the State Board of Education on the nomination of the State Superintendent of Public Instruction.

Ch. 4193, Sec. —, Acts 1893.

351. (246.) Duties of county superintendent.—The county superintendent of public instruction is directed:

Ch. 3872, Acts 1889, Sec. 22.

First.—To make timely inspection of the county, to ascertain the location in which schools should be established, the number of youth who would attend each, and the amount of aid that the citizens of the neighborhood will contribute to encourage the establishment of a school.

Second.—To visit each school at least once during each school term, and to make a thorough examination of its conditions as respects the progress of the pupils in learning, the order and discipline observed, the system of instruction pursued, the attendance of the pupils, the mode of keeping the school records, the character and condition of the school buildings, furniture, books, apparatus and premises, the efficiency of the school supervisor, the interest and co-operation of the citizens in regard to educational matters, and to give such advice as he may deem proper.

Third.—To do all in his power to awaken an increased interest in parents, guardians, school supervisors and teachers, with regard to the better education of youth in every respect and the general diffusion of knowledge.

Fourth.—To confer with the school supervisors frequently and see that they attend to their duties, keeping them supplied with a copy of the school laws, decisions, blanks and regulations of the department.

Fifth.—To select for school supervisors persons whose character, qualifications and sympathy with education specially commend them to those positions.

Sixth.—To keep a record by number, name and description of the locality of each school established, of the expenses incurred for, and of his visits of inspection to, the several schools.

Seventh.—To notify the State Superintendent of Public Instruction, immediately upon entering upon his duties, the names and addresses of all county school officers.

Eighth.—To decide upon questions and disputes which arise when submitted to him by the parties interested, and to refer his decisions to the board of public instruction.

Ninth.—To see that the interests of the county are properly guarded and its rights secured in the making and performance of every contract for the construction of school buildings, or for other purposes; and that all moneys apportioned to or raised by the county are applied to the objects for which they were granted or raised.

Tenth.—To revoke or suspend certificates and suspend those issued by other authority for cause manifestly sufficient, giving notice in writing to the authority issuing them and of the grounds for so doing; also notifying the teacher in like manner, and of the right of appeal, to whom and when the appeal should be made.

Ch. 4666, Acts 1899, Sec. 2, Revised.

Eleventh.—Acting as secretary of the county school board, he shall make and forward monthly a certified copy of the tax collector's monthly lists of persons who have paid their poll taxes, to the State Superintendent of Public Instruction, who shall file and preserve the same in his office as a part of the public records and furnish copies when requested by the citizens of this State.

Sec. 1, Ch. 4679, Acts 1899.

Twelfth.—Before the fifteenth day of May in the year of 1910 and every ten years thereafter he shall take the census of all school children in his county, between the ages of six and twenty-one years; and if any such children be idiots or insane, or blind, or deaf mutes, he shall so state, and he shall report such census to the school board of the county, and to the State Superintendent of Public Instruction, on or before the first day of June of the year of which such census shall be taken. He shall certify to such report as being correct, and shall be paid three cents for each child so reported, upon his failing to perform the duties herein required of him, he shall be relieved of office. In case he shall employ any person to assist in making any such enumeration of such children such person or persons shall make a sworn statement showing when and where such enumeration was made,

and that the same is correct, and the same shall be filed with the school board as part of his report.

County superintendent not authorized to purchase lands for school purposes without being authorized by county board of instruction.—Board of Public Instruction, Nassau County v. Billings, 15 Fla., 686.

352. (247.) Duties of supervisor.—Every supervisor is directed: Ch. 3872, Acts 1889, Sec. 23.

First.—To supervise the work and management of the school and its interest over which he is appointed, and report monthly to the board of public instruction.

Second.—To supervise the construction, rental, repair and improvement of the school buildings, furniture, fences, grounds and fixtures; to procure a copy of the school laws, regulations and decisions for the use of the teacher and his own instruction.

Third.—To attend at all times when requested by, and co-operate with the teacher in his effort to elevate the character and condition of the school; to review all suspensions from school by the teacher of pupils guilty of gross misconduct and a disregard of and persistent opposition to the authority of the teacher, and to promptly report the same to the county superintendent of public instruction.

ARTICLE 2.

TEACHERS' EXAMINATIONS.

353. Two examinations yearly.—There shall be held two examinations a year in each county in the State, beginning on Tuesday after the first Monday in June and September, and each may continue one or more days at the discretion of the examiner, and a vote of the examinees: Provided, That only one examination shall be held in any county if two be found unnecessary. Ch. 4331, Acts 1895 Sec. 9.

354. Special examination.—The county superintendent may hold a special examination, and issue temporary certificates for a term of not longer than the intervals between the regular examinations, provided the applicant for such certificate furnishes satisfactory reasons for having failed to attend the regular examinations.

355. One examination at county seat.—At least one of the examinations of teachers shall be held at the county seat Ib., Sec. 11

of the county in which the examination is held: Provided, That where two examinations are held the county board of public instruction may designate another convenient place for holding one of such examinations other than the county site.

Ch. 4192, Acts 1893, Sec. 20.

356. Special examinations.—The State Superintendent, for sufficient cause, may order examinations held on days other than those prescribed in Section 353.

Ib., Sec. 10.

357. Who county superintendent to examine.—Candidates for third, second and first grade certificates shall be examined by the county superintendent of public instruction on questions prepared in all cases by the State Superintendent of Public Instruction. The questions shall be sent sealed to the county superintendents of the various counties, which seal shall not be broken until the morning of the day on which the questions for that day are to be used, and then only in the presence of the persons assembled for examination.

358. Penalty for cheating.—Any person or persons who shall be found guilty of securing or attempting to secure the prepared questions, or who shall furnish the prepared questions to any teacher or other person in any other way than prescribed by this act, shall be debarred from teaching a school or from holding any school office in the State.

Ibid.

359. Procedure in cases of doubt.—The candidates for certificates shall ask no questions, nor receive any assistance from any source during the examination. In case any examinee may be in doubt as to the meaning of any question, he or she may state in writing the point in doubt and answer accordingly, which answer shall receive due consideration in grading the papers.

Ib., Sec. 11.

360. Mode of conducting examination.—All examination papers shall be prepared in the presence of the county superintendent or his appointed assistant, who shall collect the questions and answers on each branch as completed, and said examiner shall accept no paper of any examinee containing a name or mark which would indicate to any other than the examiner its author. Said examiner shall himself, on collecting each paper, designate it by a number known only to himself, and shall keep a record by number and name of the author of each examination paper. Every examinee shall complete and hand in the answers on each branch before the questions on any other branch shall be given out. When every examinee has completed all the branches, the

examiner shall arrange and bundle together all the papers of each examinee and shall deliver the whole to a grading committee.

361. Who permitted to teach public schools.—No person shall be permitted to teach in the public shools of the State of Florida who does not hold a teacher's certificate granted in accordance with the provisions of this act: Provided, That county superintendents may hold a special examination, and issue temporary certificates for a term not longer than the interval between the regular examinations: Provided, The applicant for such certificate furnishes satisfactory reasons for having failed to attend the regular examination: Provided, That no person shall be permitted the benefit of a second special examination under the provisions of this act: Provided further, That no certificate issued under the laws of this State since Januray 1, 1894, shall be rendered void by this act. Ch. 5204, Sec. 1, Acts 1903, as amended by Ch. 5391, Acts 1905.

362. Seven grades of certificates.—There shall be seven grades of teachers' certificates, issued as herein specified and named, respectively, to-wit: Third grade, second grade, first grade, primary, special, State and life certificates. Ib., Sec. 2.

363. Issued upon written examination.—No certificate, except life certificates, shall be issued except on written examination, or on oral and written examination as provided by law. Ib., Sec. 3.

364. Certificate of character and fee.—The applicant for the certificate of any grade, to be eligible for examination, shall present to the examiner an endorsement of good moral character from two responsible persons, and shall pay an examination fee of one dollar. The examiner shall turn over to the county treasurer, immediately after any examination, the sum of one dollar for every person examined, taking his receipt therefor, and for failure to make such disposition shall be subject to prosecution. Ib., Sec. 4.

The fund arising from examination fees shall be placed to the credit of the county school fund.

365. Third grade certificate.—A third grade certificate shall be issued to any eligible applicant who, in the uniform examination in orthography, reading, geography, arithmetic, English grammar, United States history, physiology, theory and practice of teaching, and composition, shall have made a grade in no branch below forty per cent. and an average grade of sixty per cent. in all the above branches. Ib., Sec. 5.

A third grade certificate shall be valid for two years from the date of issue, except as otherwise provided by law..

Ib., Sec. 6.

366. Second grade.—A second grade certificate shall be issued to any eligible applicant, who in the uniform examination in all the branches prescribed for a third grade certificate, shall have made a grade in no branch below sixty per cent. and an average of seventy-five per cent. in all the aforesaid branches.

A second grade certificate shall be valid for four years from the date of issue, except as otherwise provided by law.

Ib., Sec. 7.

367. First grade.—A first grade certificate shall be issued to any eligible applicant who shall have been examined in all the branches prescribed for a third grade certificate, and in civil government, algebra, and physical geography, and who shall have made a grade in no branch below sixty per cent. and an average grade of eighty-five per cent. in all the aforesaid branches.

A first grade certificate shall be valid for five years from the date of issue, except as otherwise provided by law.

Ib., Sec. 8.

368. Primary certificate.—A primary certificate may be issued by the State Superintendent to any eligible applicant who shall furnish satisfactory testimonials as to peculiar fitness for primary teaching and who shall have made a grade of eighty per cent. in such oral and written examination on primary studies and methods as may be prescribed by the State Superintendent with such assistants as he may select. Primary certificates shall be valid for four years from the date of issue, except as otherwise provided by law, and shall be valid only for teaching in the first, second and third grades of the primary departments of regularly graded schools or in public kindergartens.

Ib., Sec. 9.

369. Special certificate.—A special certificate may be issued by the State Superintendent to any eligible applicant who shall furnish satisfactory testimonials as to peculiar fitness for teaching any one or more branches not included in the requirements for second grade certificates, and shall make a grade of not less than ninety per cent. on such branch or branches in such examination as shall be prescribed by the State Superintendent with such assistants as he may select.

A special certificate shall be valid for five years from the date of issue and only for teaching the special branch or branches for which it shall have been issued.

370. State certificate.—A State certificate may be issued by the State Superintendent to any eligible applicant who shall have taught twenty-four months in all, eight months under a first grade certificate obtained in this State, and shall have passed an examination conducted by the State Superintendent of Public Instruction on geometry, trigonometry, physics, botany, zoology, Latin, rhetoric, English literature, psychology, and general history, and shall have made an average grade of eighty-five per cent. with a grade in no branch below sixty per cent. Ib., Sec. 10.

A State certificate shall be valid for five years from the date of issue and shall be valid throughout the State.

371. Life certificate.—A life certificate good in any part of the State and of perpetual validity, may be issued by the State Superintendent of Public Instruction, without examination, to any teacher holding a State certificate issued since January 1st, A. D. 1894, and who has successfully done high school or college teaching in this State for a period of thirty months under a State certificate, and who shall present satisfactory endorsement showing eminent ability in teaching and school government from three persons holding life certificates. Ib., Sec. 11.

372. Endorsement of certificate.—A first, second and third grade certificate may be endorsed by the county superintendent of any county in the State, and shall then be valid for its unexpired term in the county in which it is endorsed. Ib., Sec. 12.

373. First grade and primary certificates made perpetually valid under certain conditions.—Whenever the holder of a first grade certificate shall present to the county superintendent of any county in the State satisfactory evidence that he or she has taught school successfully for twenty years in this State, nine years of which shall have been taught under certificates issued since January 1st, A. D. 1894, and that he or she is of good moral character and faithful and successful as an instructor and disciplinarian, the county superintendent of any county in the State may, upon further examination as he may deem necessary, endorse said certificate, making it perpetually valid during the life of the holder in the county where such endorsement is made. Ib., Sec. 13.

Whenever any teacher shall present satisfactory evidence that he or she has taught school in this State for six years under first grade certificates, the average grade of such certificate being not less than ninety per cent., issued since January 1st, A. D. 1894, and that he or she is of good moral character, and faithful and successful as an instructor and disciplinarian, the county superintendent of any county in

this State may, without further examination, issue to such teacher a first grade life certificate, good in any part of the State, and of perpetual validity in the county where such endorsement is made.

Whenever the holder of a primary certificate shall present to the State Superintendent satisfactory evidence of having taught successfully under said certificate for four years, the State Superintendent may endorse said certificate, thereby making it valid during the life of the holder.

Ib., Sec. 14.

374 Certificate may be revoked.—A certificate of any grade may be revoked by the authority issuing it or by the State Superintendent when it is proved that the holder thereof is unsuccessful, incompetent, or guilty of any immorality, or fails to be governed by the rules and regulations of the department of public instruction.

Ch. 4331, Acts 1895, Sec. 6.

375. Grading committee.—Who eligible.—The county board of public instruction, prior to any authorized examination, shall appoint three teachers holding the highest grade certificates among the teachers of the county as a grading committee; and keep secret the names of persons comprising said committee until its work is performed. Said committee shall immediately after the close of any examination carefully examine and grade each paper turned over to it by the county superintendent. When the said committee shall have completed its work it shall deliver back to the county superintendent all papers turned over to it, with a gradation sheet, showing the grade of each examinee in each branch upon which he or she was examined, also the average grade and rank of each examinee.

Ibid.

376. Gradation sheet.—The county superintendent shall then, for the first time, make known to the grading committee the name corresponding to the number of any examinee, and shall then, in the presence of said committee, present his list and write on said gradation sheet the name of each examinee after his or her proper number. The said grading committee shall retain one copy of said gradation sheet, and shall file one with the county superintendent, who shall issue certificates to the examinees making averages according to the provisions of Sections 361 to 370, and to no others.

Ch. 4993. Acts 1901, Sec. 1.

377. Examination questions and answers filed.—All examination questions and answers prepared by the applicants for certificates shall be filed in the office of the county superintendent and properly preserved for at least one year, and in case any candidate is dissatisfied with the grading of his or her papers, he or she may file a notice of appeal there-

from, together with a fee of five dollars, with the county superintendent of public instruction, who shall at once forward the papers of such applicant to the State Superintendent of Public Instruction. Upon the receipt of such papers the State Superintendent shall at once appoint a committee of three leading teachers of the State of Florida who shall, as soon as practicable, regrade such papers and certify their acts to the county superintendent of the county from which the appeal emanated, and these grades shall be final and the county superintendent shall issue certificates based upon them only. Such grading committee of appeals shall be paid by the board of public instruction of the county from which the appeal emanated the sum of one dollar and fifty cents each for each set of papers so graded.

378. Pay of committee.—It shall be the duty of the county board to pay the members of the grading committee two dollars per day and five cents a mile each way, one trip, for the actual distance traveled and for the time necessary for them to perform their work. In estimating a day, ten hours' actual service shall be counted a day, and not more than five days shall be allowed for the completion of the grading of all the papers after any examination.

Ch. 4192, Acts 1893, Sec. 15.

ARTICLE 3.

DUTIES AND POWERS OF TEACHERS.

379. (253.) Every teacher is directed:

First.—To labor faithfully and earnestly for the advancement of the pupils in their studies, deportment and morals, and to embrace every opportunity to inculcate, by precept and example, the principles of truth, honesty and patriotism and the practice of every Christian virtue.

Ch. 3872, Acts 1889, Sec. 29.

Second.—To require the pupils to observe personal cleanliness, neatness, order, promptness, and gentility of manners, to avoid vulgarity and profanity and to cultivate in them habits of industry and economy, a regard for the rights and feelings of others, and their own responsibilities and duties as citizens.

Third.—To see that the school house, and all things pertaining thereto are not unnecessarily defaced or injured.

Fourth.—To enforce needful restrictions upon the conduct of the pupils in or near the school house or grounds.

avoiding at all times unnecessary severity and measures of punishment that are degrading in their tendency.

Fifth.—To suspend pupils from school for ten days for gross immorality, misconduct or persistent violations of the regulations, giving immediate notice to the parents or guardian of the pupil, and to the school supervisor, of the suspension and the cause of it.

Sixth.—To hold a public examination at the close of each school term, either oral or written.

Seventh.—To deliver up the keys and all school property to the supervisor on closing or suspending the school, and in all things to conform to the regulations of the department.

Ib., Sec. 30.

380. (254.) Teachers exempt from jury and military duty.—No teacher while actually engaged in his profession shall be liable to military or jury duty.

Ch. 5207. Acts 1903, Sec. 1.

381. Temporary absence of teacher how filled.—Whenever a teacher in a public school of this State, desires to be temporarily absent from duty, not to exceed three days, and shall be excused from duty during such absence by the county superintendent, or by the trustees or supervisor of such school, such teacher may provide a substitute, who shall be first approved by the county superintendent, trustees or supervisor of such school, and the pay of such absent teacher shall be left to the discretion of the board of public instruction, for the time of such absence; but the pay of such substitute shall be provided for by the teacher whose place is thus taken. When any such teacher referred to herein is employed in a graded or high school, the principal of such school may approve of such substitute and excuse such teacher.

Ib., Sec. 2.

382. When absence exceeds three days.—When a teacher in a public school of this State is granted leave of absence from duty by the county superintendent or trustees of such school for a time exceeding three days, the temporary vacancy shall be filled by the county board of public instruction, or by the county superintendent, or by the trustees of such school, and such substitute, if practicable, shall be one holding a teacher's certificate for the grade to be supplied, and shall receive such pay as shall be agreed upon by the county board, or by the trustees making such appointment, before entering upon duty. The pay of the absent teacher shall cease during such absence.

Ib., Sec. 3.

383. Forfeiture of pay in certain cases.—Any teacher absent without leave, shall forfeit pay for the time of such

absence: Provided, An absence of not exceeding two days may, with the consent of the county superintendent, trustees or supervisor, be made up by such teacher teaching additional time: Provided, This section shall not apply to graded or high schools.

384. Teacher's report.—A teacher's monthly report shall in every case, except as herein provided, be made for twenty days of actual teaching, and such report must be filed with the county superintendent before warrant may be drawn for all or any part of such service: Provided, That a school holiday occurring in any scholastic month may be counted as one of the twenty days taught; and, Provided, That when a school term may embrace a fractional number of months, the last monthly report shall be made for a fractional part of a month and payment shall be made for such fraction of a month. Ch. 4992, Acts 1901, Sec. 2.

385. Relief for aged teachers.—Any teacher in the State of Florida who has taught the whole or part of each year for twenty years prior to January 1st, 1900, in the public or private schools of the State of Florida, and who presents satisfactory proofs of such fact to the county superintendent of public instruction of the county of which he is a resident, shall be entitled to receive from said county superintendent of public instruction a certificate of such fact, which said certificate shall entitle said teacher to teach in any public school in said county in the primary and intermediate grades: Provided, A majority of the patrons of such school shall select such certificate holder as such teacher; and no further examination of such teacher shall be necessary or required hereafter: Provided, That said teacher shall have procured at least one certificate under the present uniform examination law of this State and shall not teach in any grade higher than that called for in the certificate. Ch. 4995, Sec. 1, Acts 1901.

ARTICLE 4.

PUBLIC HIGH SCHOOLS AND RURAL GRADED SCHOOLS.

(This Article re-enacted by Ch. 5382, Appendix.)

386. Number of years of instruction.—The uniform system of public free schools of the State of Florida shall provide for twelve consecutive school years of instruction, exclusive of kindergartens, normals, colleges and universities, and such other schools as may be designated or established by the Legislature. Ch. 5206, Acts 1903, Sec. 1.

Ib., Sec. 2.

387. School year.—Each school year of instruction shall be designated as a grade, and no official course of study shall recognize less than a school year of eight months of instruction as constituting the work of a grade.

Ib., Sec. 3.

388. Grades of instruction.—The first two grades shall be known as primary grades; the third, fourth, fifth and sixth grades shall be known as intermediate grades; the seventh and eighth grades shall be known as grammar grades; the ninth and tenth grades shall be known as junior high school grades, and the eleventh and twelfth grades shall be known as senior high school grades.

Ib., Sec. 4.

389. Primary grades.—Instruction shall be given in the primary grades in reading, spelling, language, physiology and hygiene, numbers and writing, and such lessons in music, drawing, geography, natural study, morals and manners, as may be provided for in the county course of study.

Ib., Sec. 5.

390. Intermediate grades.—Instruction shall be given in the intermediate grades in reading, spelling, language, arithmetic, geography, physiology, hygiene, writing, elementary science, and such lessons in music, drawing, history, nature study, morals and manners, as may be provided for in the county course of study.

Ib., Sec. 6.

391. Grammar grades.—Instruction shall be given in the grammar grades in reading, orthography, grammar, arithmetic, (oral and written), science, physiology, geography, history and civil government of Florida, and of the United States, and such lessons in music, drawing, morals and manners, manual training, domestic arts and sciences, and agriculture, as may be provided for in the county course of study.

Ib., Sec. 7.

392. High schools grades.—Instruction shall be given in the high school grades in such subjects and to such extent as shall be designated in the course of study for high schools hereinafter provided for.

Ib., Sec. 8.

393. Course of study.—Immediately after the passage and approval of this act, the State Superintendent of Public Instruction shall appoint a committee of not less than six nor more than ten of the most capable persons, of whom not less than one-third shall be presidents or principals of State institutions for higher education, and not less than one-third shall be principals of high or graded schools, and these, together with himself, at the earliest practicable date, shall prepare a standard course of study for high school grades. Said course of study shall prescribe minimum requirements

and shall be arranged as far as practicable to secure equality of mental power and training among those completing its instruction, and to insure suitable preparation for entrance into the lowest college classes of the State institutions for higher education; but shall not prescribe unnecessary details as to order or method of instruction, though it may recommend such details. When such course of study shall have been prepared, the State Superintendent of Public Instruction shall cause same to be printed for free distribution.

394. Expenses of committee paid.—The members of the committee provided for in the preceding section shall serve without compensation, but they shall be paid all necessary expenses incurred in performing the services required. Ib., Sec. 9.

395. State aid for high school.—Any public high school maintained by taxation and controlled by the county board of public instruction, which shall provide instruction of the character prescribed by law for high school grades, and which shall be conducted in a suitable building with a reasonable amount of furniture and equipment, may receive from the State treasury aid as follows: Any high school which shall maintain only the first two or junior grades, prescribed in the official course of study for high schools, shall receive $360.00 per annum for three years; and any high school maintaining all four, or junior and senior high school grades, as prescribed by the State course of study for high schools, shall receive six hundred dollars ($600.00) per annum for three years. Ib., Sec. 10.

396. State aid for rural graded schools.—Any public school which shall be maintained not less than three miles distance from any town or city of more than five hundred inhabitants which shall be supported by the public school funds and controlled by a county board of public instruction, which shall provide all instruction of the character prescribed by law, in intermediate and grammar grades, during not less than eight months of each year, and which shall be conducted by not less than two qualified teachers in a suitable building, and which shall have necessary equipment and furniture, shall receive from the State treasury two hundred dollars ($200.00) per annum for four years: Provided, That the three-mile limit prescribed in this section shall not apply to schools the pupils of which are prevented by natural barriers from attending the nearest graded schools. Ib., Sec. 11.

397. How State aid granted.—In order to receive aid as provided for in the two preceding sections, the county board of public instruction controlling any school entitled to re- Ib., Sec. 12.

ceive same shall make application to the State Board of Education, in such form as may be prescribed by said State Board of Education, not later than January 1st of any school year. Upon receipt of such application the State Board of Education shall cause investigation of same to be made by the State Superintendent of Public Instruction, and if satisfied that all conditions have been complied with fully, the said Board of Education shall make requisition upon the State Comptroller for the amount due under provisions of the two preceding sections: Provided, That if the amount appropriated for any year shall prove insufficient to aid all schools duly entitled thereto, then the amount available under this article shall be prorated among all the schools that have complied with the conditions herein imposed.

Ib., Sec. 13.

398. State aid not granted same school twice in one year. Aid shall under no circumstances be granted to the same school a second time during the same scholastic year, nor shall any school be permitted to receive aid a second time because of a change of name, number, location or any other change which may be made for the purpose of securing additional aid for the same school or for any school instituted in the stead of the same school.

(Kindergartens: See Ch. 5387, Appendix.)

ARTICLE 5.

SPECIAL TAX SCHOOL DISTRICTS.

Ch. 4678, Acts 1899, Sec. 1.

399. Special tax schools.—Each county shall constitute a school unit; all sub-divisions of a county for school purposes shall be designated as school districts; all school districts levying a school district tax, shall hereafter be designated as special tax school districts, and all schools receiving any district tax, as special tax schools.

Ib., Sec. 2.

400. Petition for election, etc.—It shall be the duty of the board of public instruction of any county to order an election to be held in any sub-division of any city, or incorporated town, community or sub-division of the county, at such time and place as said board may direct, whenever one-fourth of the qualified electors that pay a tax on real or personal property, and are resident in such city, incorporated town, community, or sub-division of the county, shall petition for such election, to determine whether such city, in-

corporated town, community or sub-division of the county shall become a special tax school district for the purpose of levying and collecting a district school tax for the exclusive use of public free schools within the district; at such election the following matters shall be determined by a majority of the ballots cast by electors qualified as herein prescribed, except that the three persons receiving the highest vote at such election shall be declared school trustees of said district: First, whether the city, incorporated town, community or sub-division of the county shall become a special tax school district; Second, who shall be the school trustees of said district; Third, the number of mills of district tax to be levied and collected annually for the two succeeding years. The three persons receiving the highest number of votes cast shall be declared the trustees elected for the special tax school district: Provided, a majority of all the votes cast be in favor of creating such special tax district, who shall serve for the next ensuing two years and perform the duties hereinafter prescribed.

401. Boundaries of district.—The petition mentioned in the preceding section shall prescribe the boundaries of the sub-divisions of any city or incorporated town, community or sub-division of the county intended to be formed into a special tax school district. The board of public instruction may, however, change the boundaries thereof before ordering any such election; but shall in no case include territory not included in the original petition, and shall give notice of any such change in the notice of election. Special tax school districts created under this act, shall continue until dis-established or changed by like proceeding as those by which they were created. The petition provided for by the preceding section shall be published once a week for four successive weeks, in some newspaper published in the county having a general circulation throughout the county; and the publication shall state when such election will be presented to such boards. In case there shall be no newspaper published in the county, such petition and notice shall be posted in the manner provided for in the next section for the posting of notice of election. Ib., Sec. 3.

402. Board of public instruction to give notice and appoint inspectors.—It shall be the duty of the board of public instruction of the county to cause a notice of said election to be published once a week for four successive weeks prior thereto in a newspaper published within the county, and having a general circulation throughout the county; but if no newspaper be published in such county, then it shall cause five written or printed notices of said election to be posted in Ib., Sec. 4.

five public places within the territory in which the election is ordered. It shall also be the duty of the county board of public instruction to appoint inspectors and clerks for said election, whose duty shall be the same as those of similar officers in general elections, except as herein stated.

Ib., Sec. 5.

403. Canvass of returns.—The board of public instruction shall canvass the returns of election as made to it by the inspectors and clerks of election, and declare the results at the next regular meeting of said board, or at a special meeting called for that purpose.

Returns properly made to board of public instruction.—Pickett v. Russell, 42 Fla., 116, 28 So. Rep., 764.

Ib., Sec. 6.

404. Election.—All special tax school district elections shall be held and conducted in the manner prescribed by law for holding general elections, except as provided in this article, and it is hereby made the duty of the supervisor of registration of any county, to furnish upon payment for such service to the county board of public instruction, on demand. a certified list of the qualified voters residing in a special tax school district, or the territory to be created into a special tax school district, that have paid a tax on personal or real property for the year next preceding any such special tax election.

Election generally.—Pickett v. Russell, 42 Fla., 28 So. Rep. 764.

Ib., Sec. 7.

405. Who entitled to vote; expenses.—All qualified voters residing within the territory sought to be made a special tax school district that pay a tax on real or personal property shall be entitled to vote in said election, and a majority of the votes cast shall determine any matter voted upon, pertaining to a special tax school district. The cost of the publication of the notice and of the election itself, shall be paid by the county board of public instruction out of the first moneys collected from the special tax district.

Previous registration of electors not necessary.—Pickett v. Russell, 42 Fla., 116, 28 So. Rep., 764. Not necessary to open registration books.—Ib.

Ib., Sec. 8.

406. Election bi-ennially.—Elections shall be held bi-ennially in each special tax school district, as near as practicable upon the anniversary of the original election under the direction of the county board of public instruction, to determine who shall be trustees for the next succeeding two years, and the number of mills of district school tax to be levied for each of said years; said election shall be held under the same rules and regulations, and qualifications of electors shall be the same as prescribed for those voting in the original election creating a special tax school district

407. Supervisor superseded by trustees.—Whenever a special tax school district is created and trustees are elected, they shall have the supervision of all the public schools within said district. The position of supervisor shall be superseded by that of trustees, and the duties prescribed by law for the supervisors shall be performed by the trustees. The powers of trustees shall not be those of control, but of supervision only, and shall extend to all of the public schools within the special tax district. Any trustee failing to discharge the duties of the position shall be removed, after due notice to such trustee, by the county board of public instruction, and all vacancies occurring in the board of trustees from any cause, shall be filled for the unexpired term by the county board of public instruction, upon nomination by the patrons of the schools. Ib., Sec. 9.

408. Under control of county board of public instruction and county superintendent.—All public schools conducted within a special tax school district shall be under the direction and control of the county board of public instruction and county superintendent as in other districts, and subject to the same laws, rules and regulations prescribed for the conduct of other schools, except that the trustees shall have the power to nominate to the county board of public instruction teachers for all schools within such special district: Provided, That no person be nominated for teacher who does not hold a teacher's certificate unimpaired by suspension, revocation or limitation, or that will not remain in full force for the term of school, and obtained in compliance with the laws of this State. The county board of public instruction shall have the right to reject any teacher nominated, and in case the second nomination of a teacher for any position be not ratified, the said board shall then proceed, on its own motion, to fill vacancies in the teaching force in any school in the special tax school district. Ib., Sec. 10.

409. Application of school funds.—The board of trustees shall have the further right to say what proportion of the school funds raised within the district shall be applied in any year to buildings, repairs on buildings, to school libraries, to salaries of teachers and to other educational purposes: Provided, That they shall make a fair and equitable distribution of the funds among all the schools in the special tax school district, which shall be shown in their itemized estimate. Ib., Sec. 11.

410. Duty of trustees as to money to be raised.—It shall be the duty of these trustees, on or before the first day of June in each year, to prepare an itemized estimate, showing Ib., Sec. 12.

the amount of money necessary and likely to be raised for the supplement of the county school funds appropriated to the district for the next ensuing scholastic year, and to certify therein the rate of millage voted to be assessed and collected upon the taxable property within the special tax school district for that year. This estimate shall set forth clearly the apportionment of money raised within the district, prorated to each school within the district, stating the amount that will be applied to the salaries of teachers, buildings, furniture or for other educational purposes. It shall also state the number of miles of railroad track and telegraph lines within the boundaries of the district. This itemized estimate shall be made in triplicate, one copy to be filed with the clerk of the board of county commissioners, one copy with the Comptroller of the State, one copy with the county board of public instruction: Provided, That where there are no railroads or telegraph lines in such district such itemized estimate need not be furnished to the Comptroller.

Ib., Sec. 12.

411. Duty of county commissioners.—It shall be the duty of the county commissioners to order the assessor to assess, and the collector to collect the amount legally assessed upon the property of the special district, at the rate of millage designated by the board of trustees, and pay the same to the county treasurer. It shall be the duty of the Comptroller of the State to assess all railroads and railroad property, together with telegraph lines and telegraph property situated in such special tax school district and to collect the taxes thereon in the same manner as required by law to assess and collect said taxes for State and county purposes, and to remit the same to the treasurers of the counties, to be by them held to the credit of each special tax school district fund and to be paid out as hereinafter provided.

Ib., Sec. 12.

412. Duty of county board of public instruction.—It shall be the duty of the county board of public instruction to add the amount set apart for the salaries of teachers in each school within the special tax school district to the county appropriation made for that school, and upon this determine the salaries to be paid teachers and the length of the term that the school shall continue, and contract with teachers for the full term that said fund, arising from both county appropriation and the special tax fund, will sustain the school. The part of this fund arising from the special tax shall be paid to the teachers upon the order of the county board, based upon reports approved by the trustees, the same as other school funds are paid upon the endorsement of school supervisors. The county treasurer shall be liable for all special tax school district funds upon his official bond, after receiving said funds, as in the case of other county revenues.

413. Special tax fund.—The special tax fund set apart by the board of trustees for the payment of teachers shall not be subject to requisition for any other purpose by said trustees; the fund estimated for other educational purposes shall be paid out by warrants of the board of public instruction of the county upon the county treasurer, and said warrants to be based upon requisitions made by the board of trustees, accompanied by itemized bills for things purchased or work performed. All special funds collected within a school district shall be disbursed solely for school purposes within the district in which the tax is collected, and, as near as practicable, in the year in which the tax is collected, upon the recommendation of the board of trustees: Provided, That the trustees shall make no contract with any of its members embracing any monetary consideration. Ib., Sec. 13.

414. Trustees shall be a corporation.—The trustees of any school district shall be a corporation and may hold property, sue and be sued, and perform other corporate functions, and perform the usual duties necessary to provide buildings, repair the same, and to purchase libraries and other school appliances: Provided, That no debt shall be created without the approval of the county board of public instruction. Ib., Sec. 14

415. Non-resident children may attend.—Children residing outside of any special tax school district shall not attend school in any such district without the consent of the trustees thereof, and of the county board of public instruction: Provided, That nothing in this act shall be so construed as to prevent attendance from an adjoining county, provided the county school board of such adjoining county shall pay a pro rata share of such attendance. Such pro rata share to be estimated by the trustees of such school where such attendance is made: Provided, further, That pupils from other districts or sub-districts shall be subject to same conditions as pupils from other counties as herein provided for. Ib., Sec. 16.

416. Form of ballot.—Each voter voting at any such election shall vote but one ballot, and the same shall be written, or printed in black ink on plain white paper, and be substantially of the following form, according as he may desire to vote upon any, or all of the questions submitted: Ib., Sec. 17.

For (or against) Special Tax School District.....
School Trustees (stating their names).....
.....
.....
.....
Maximum tax levy ..... mills.

(Discontinuing Special Tax Districts: See Ch. 5389, Appendix.)

CHAPTER II.

STATE SCHOOLS.

(As amended by Ch. 5384, Acts 1905, Sec. 11.)

COLORED NORMAL SCHOOLS.

Ch. 5384, Acts 1905, Sec. 11.

417. (269.) Colored Normal School.—A Normal School for the training and instruction of colored teachers is established under the supervision and control of the State Board of Education and the Board of Control hereinafter provided. The Board of Control shall elect a faculty to consist of a principal and two assistant instructors who shall have in charge the training and instruction of all students, subject at all times to the approval of and under such rules and regulations as the Board of Control hereinafter created shall prescribe, and such Board, under rules and regulations hereinafter to be made, shall have the power of removal of all or any of the faculty, may increase or diminish the same, and may add such other departments of instruction and education to such institution from time to time as may be deemed advisable. The Colored Normal School now established at Tallahassee shall be such school, and the faculty remain as now until changed by said board, but the State Board of Education shall have power to change the location of same at any time it may deem it of benefit or advantage to such institution or the purposes for which it was created, and that one-half of the Morrill fund coming or that may come to the State for the purposes provided in such act is set apart and appropriated to the support and maintenance of said school.

(For State University, Female College, and School for Blind. Deaf and Dumb, see Chapter 5384, Appendix.)

CHAPTER III.

INSTITUTE FOR BLIND, DEAF AND DUMB.

(See Ch. 5384, Appendix.)

Ch. 5209, Acts 1903, Sec. 1.

418. Under direction of board of trustees.—The Florida School for the Blind, Deaf and Dumb, shall be under the direction of five trustees, who shall be appointed by the Governor, not more than two of whom shall be residents of the

county in which said school is located; two of whom shall be appointed to serve two years, and three for the term of four years, and thereafter all such appointments shall be for the term of four years. The members of the said board of trustees shall elect annually from their number, a president and secretary; the State Treasurer by virtue of his office shall be the treasurer of the said board. The board of trustees shall have power to build and construct school buildings as they may deem necessary; to contract and be contracted with, to sue and be sued, plead and be impleaded in all courts of law and equity; to receive donations and make purchases of land, and to sell and convey the same. The said trustees shall receive no compensation for their services while attending any meeting of the board, but may be allowed traveling expenses while going to and from and attending such meetings.

419. Location.—The said school shall remain in its present location, near St. Augustine, in the county of St. Johns, and shall be known as the Florida School for the Blind, Deaf and Dumb. Ib., Sec. 2.

420. Who to be educated and maintained.—The board of trustees shall provide for the education, care and maintenance at said school of all persons residing in this State between the ages of six and twenty-one years of age, who are blind or deaf or dumb: Provided, That no person attending said school who is making marked progress on attaining the age of twenty-one years shall be dismissed from said school excepting at their own option, until such person shall have graduated. Ib., Sec. 3.

421. Admission.—Any person entitled to admission to the said school, or the parent, guardian, or next friend of said person, may apply to the board of county commissioners of the county of his or her residence, and the county commissioners if satisfied that such person is entitled to such admission, shall issue a certificate to that effect, upon which the applicant shall be received into the school. Ib., Sec. 4.

422. Transportation.—The said board of county commissioners shall supply means of transportation of such person to said school, and at the close of each term of school the board of trustees shall supply means of transportation for the students to their respective homes, and return at the opening of the succeeding session thereof, the same to be paid out of the appropriation for the maintenance of said school. Ib., Sec. 4.

423. Those who have the means to pay.—Those who have the means shall be required to pay the necessary expenses, tuition excepted, of their children or wards: Pro- Ib., Sec. 4

vided, That the trustees upon the recommendation of the superintendent, may allow pupils to remain after they reach the age of twenty-one years.

Ib., Sec. 4.

424. Trustees to provide necessaries.—Said board of trustees shall provide for the students of said school, necessary bedding, clothing, food and medical attendance, and such other things as may be proper for the health and comfort of said students.

Ib., Sec. 5.

425. Trustees to employ teachers, provide for examinations, make report.—The board of trustees shall employ only such teachers as are competent to instruct the blind, deaf and dumb, and shall provide for the examination of all applicants to teach in said school, and shall provide all necessary equipments to be used in said school, and shall provide for the equipment of the industrial department, and shall furnish a detailed report of the condition and management, the work done and expenditures of said school annually to the State Board of Education.

CHAPTER IV

AGRICULTURAL STATION FOR FLORIDA.

Ch. 4234, Acts 1893, Sec. 1.

426. Experimental station.—There shall be established at some suitable point in Florida, possessing climatic conditions for growing all kinds of plant life, including cinchona, log-wood and camphor, olive and india rubber trees, also manilla, tea, coffee, jute, New Zealand flax, etc., on muck lands over which the Trustees of the Internal Improvement Fund have exclusive control under the act of Congress of September 28, 1850, an experimental station, to be operated by or under the supervision of the Commissioner of Agriculture and under such rules, regulations and conditions as may be prescribed by the Trustees of the Internal Improvement Fund of the State of Florida.

Ib., Sec. 2.

427. Duties of Trustees of I. I. Fund.—For the purpose of carrying out the provisions of the preceding section, and to create a fund for the establishment and maintenance of said agricultural station, and for the further drainage and reclamation of the lands set apart for that purpose, the Trustees of the Internal Improvement Fund of the State of Florida are hereby authorized and directed to set apart one hun-

dred thousand acres of the land granted the State of Florida by the act of Congress of September 28, 1850, to be sold at such prices as may be fixed by the trustees, and the proceeds thereof to be expended by the said Trustees of the Internal Improvement Fund in carrying out the provisions of said section.

TITLE VI.

TAXATION AND FINANCE.

CHAPTER I.

TAXATION.

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Ch. 4322, Acts 1895, Sec. 1.

428. Subjects of taxation.—All property, real and personal, in this State, not hereby expressly exempt therefrom, shall be subject to taxation in the manner provided by law.

Ib., Sec. 2.

429. Real property defined.—Real property, for the purpose of taxation, shall be construed to include land and all buildings, fixtures and other improvements thereon, and the terms land and real estate, when used in this chapter, shall be construed as having the same meaning as real property.

Ib., Sec. 3.

430. Personal property defined.—The terms property and personal estate, as used in this chapter, shall have the same meaning, and shall, for the purpose of taxation, be construed to include all goods and chattels, moneys and effects, all boats and vessels, whether at home or abroad, all debts due or to become due, from solvent debtors, whether on account, contract, note or otherwise, all public stocks or shares in all incorporated or unincorporated companies.

431. Property exempt from taxation.—The following shall be exempt from taxation:

First.—All property, real and personal, of the United States and of this State.

Ch. 5263, Acts 1903, Sec. 1, amending Ch. 4322, Acts 1895, Sec. 1.

Second.—All public property of the several counties, cities, villages, towns and school districts in this State, used or intended for public purposes, including both real and personal property, of all fire, hose and hook and ladder companies, except lands sold for taxes for the use of any of said counties, cities, villages, towns or school districts.

Third.—Such property of literary, educational, benevolent, charitable and scientific institutions within this State, as shall be actually occupied and used by them solely for the purpose for which they have been or may be organized; but property of such institutions which is rented and the rents, issues and profits only used by such institutions, shall not be exempt from taxation, nor shall any property held by them as an investment or for speculation be exempt from taxation.

Fourth. All houses of public worship and the lots on which they are situated, and the pews and steps, and furni-

ture therein, every parsonage, and all burying grounds not held or owned by individuals or corporations for speculative purposes, tombs, and right of burial; but any building being a house of worship which shall be rented or hired for any other purpose except for schools shall be taxed the same as any other property.

Fifth.—All public libraries and all real and personal property belonging to and connected with the same, consisting of the library itself and real and personal property held for the actual use and occupation of such library only, and not for rent, profit or speculation.

Sixth.—All property, real and personal, held by and belonging to any agricultural society in this State, and used exclusively for the meetings or exhibitions of such society, which now is or may hereafter be lawfully organized in pursuance of law.

Seventh.—There shall be exempt from taxation property to the value of two hundred dollars to every widow dependent upon her own exertions, and to every person who has lost a limb or been disabled in war or by misfortune to that extent that it disqualifies him from the performance of manual labor.

432. Other definitions.—The term money or moneys whenever used in this act, shall be held to mean gold and silver coin, United States treasury and bank notes, legal tender and all other forms of currency, and every deposit which any person owning the same or holding in trust and residing in this State is entitled to withdraw in money on demand. Ch. 4322, Acts 1895, Sec. 5.

The term credits shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due.

The term parcel of real property and parcel of land shall each be held to mean the quantity of land in the possession of, owned by or recorded as the property of the said claimants, persons or company.

433. Lands, where and how assessed.—All lands shall be assessed in the county, town or city in which the same shall be, and the real estate of incorporated companies liable to taxation shall be assessed in the city, county or town in which the same shall be in the same manner as real estate of individuals, and may be returned and sold in the same manner as property owned by individuals, and shall be assessed at their full cash value. Ib., Sec. 6.

434. Assessment of property of religious societies.—All property held by any religious society shall be assessed and Ib., Sec. 7.

taxed in the county where the property is situated, unless exempt by law.

Ib., Sec. 8.

435. Taxation of stock.—The owner or holder of stock in any incorporated company, firm or firms, doing business under corporate names, which is taxed on its capital stock, shall not be taxed as an individual for such stock: Provided, That such stock is returned for assessment by such company: Provided, That this section shall not apply when the property of the incorporated companies is in this State, and taxes are paid on the same.

Ib., Sec. 8.

436. Shares in banks.—All shares of banking associations organized within this State pursuant to the provisions of the act of Congress to procure a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate, in the assessment of taxes in the city or town where such banking association is located and not elsewhere, whether the holder resides there or not, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals; and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall pay the same as the agent of each of its share holders, and the said association may retain so much of any dividend belonging to any shareholder as shall be necessary to pay any taxes levied upon its shares.

Ib., Sec. 8.

437. Banking, loan and trust companies.—Any banking, loan or trust company or corporation, or any person acting as the agent of another, and having in his possession or under his control and management, any money, notes and credits or personal property belonging to such other person with a view to investing or loaning, or in any other manner using the same for pecuniary profits, shall be required to return the same for assessment at the real value, and such company, corporation or person shall be liable for the tax on the same; and if such company, person or corporation refuse to list such property on a return for assessment, or to swear to the same, the amount of such money, notes, mortgages, or credits may be listed and valued according to the best knowledge and judgment of the assessor.

Ch. 5106, Acts 1903, Sec. 1.

438. Occupational taxes and licenses.—No person shall engage in or manage the business, profession or occupation for which a State license is required unless such State license shall have been procured from the tax collector or State

Treasurer; which license shall be issued to each person on receipt of the amount hereinafter provided for, together with the county judge's fee of twenty-five cents for each license countersigned by him, and shall be signed by the tax collector and county judge and shall have the county judge's seal thereon.

439. Counties and incorporated cities and towns may impose additional taxes of same kind.—Counties and incorporated towns and cities may impose such further taxes of the same kind upon the same subjects as they may deem proper, unless otherwise provided in this act, when the business, profession, or occupation shall be engaged in within such county, city or town. The tax imposed by said county, city or town, shall not exceed fifty per cent. of the State tax, but such county, city or town may impose taxes on any business, profession or occupation not mentioned in this chapter, when engaged in or managed within such county, city or town. Ib., Sec. 2.

440. License issued for not more than one year; transfer of license.—No license shall be issued for more than one year, and all licenses shall expire on the first day of October of each year; but fractional licenses, except as hereinafter provided for, may be issued to expire on that date at a proportionate rate. All licenses may be transferred, with the approval of the Comptroller, with the business for which they were taken out, when there is a bona fide sale and transfer of property used and employed in the business as stock in trade; but such transferred license shall not be held good for any longer time, or any other place than that for which it was originally issued: Provided, That the original license shall be surrendered to and filed with the county judge or State Treasurer, as the case may be, at the time application for transfer is made, and such transfer after being approved shall be of the same force and effect as the original license: Provided, further, That the license to sell spirituous, vinous, or malt liquors shall be transferred only to a person who has complied with all the prerequisites to obtaining licenses prescribed by existing laws, for the sale of spirituous, vinous or malt liquors. Ib., Sec. 3.

441. When license tax payable. Fractional license.—All licenses shall be payable on or before the first day of October of each year, and no license shall be issued for any fractional portion of a year; except that any license not otherwise specified in this act may be issued after the first day of April to expire October first, upon payment of one-half of the amount fixed as the price of such license for one year. Ib., Sec. 4.

Ib., Sec. 5.

442. Amount State license tax in certain cases.—The following enumerated individual license taxes shall be paid to the State by the persons engaging in, managing or transacting the several occupations or professions named, to-wit:

Auctioneers in cities or towns of ten thousand inhabitants, and not less than five thousand inhabitants, ten dollars; less than five thousand inhabitants, five dollars.

Abstractors of title, ten dollars in each county.

Clairvoyants, palmists, or fortune tellers in each county, twenty-five dollars.

Lawyers, ten dollars.

Each member of law firm must pay license tax.—Blanchard, Col., et al, v. State ex rel. Calhoun and Dewitt, 30 Fla., 223, 11 So. Rep., 785.

Parties selling or offering to sell real estate on commission, ten dollars.

Physicians, ten dollars. (See Ch. 5481, Appendix, exempting physicians.)

Dentists, ten dollars.

All persons and notaries public, preparing deeds and mortgages for profit, other than lawyers and real estate agents who have paid their license tax required by this chapter, shall pay a license tax of five dollars to the State: Provided, That this shall apply only to persons residing in incorporated cities and towns.

Gypsies. Every company of travelling Gypsies engaged in trading or fortune telling, twenty-five dollars for each county where they carry on business, or offer to do so.

Hawkers or street venders of medicines, drugs or patent medicines or other preparations purporting to possess medical virtues shall be required to pay a license tax of one hundred dollars in each city, town or place, and for each day in which they may attempt to sell such medicines: Provided, however, That this act shall not apply to home manufactured medicines sold to licensed dealers.

Ib., Sec. 6.

443. Vendor of drug, etc.—Any itinerant vendor of any drug, ointment or appliance of any kind intended for the treatment of any disease or injury or deformity, by any drug, nostrum or manipulation or other expedient, shall pay a license tax of two hundred dollars for each day in which they may attempt to sell or transact any business.

Ib., Sec. 7.

444. Junk shops.—Proprietors of junk shops shall pay to the State a license tax of fifty dollars for each place of business.

Ib., Sec. 8.

445. Dealers in liquors.—Dealers in spirituous, vinous and malt liquors shall pay a license tax of seven hundred and fifty dollars in each county for each place of business; two

hundred and fifty dollars shall go to the county, and five hundred to the State; and any city or incorporated town shall require an additional license tax of two hundred and fifty dollars: Provided, That whenever any such place of business is located outside of the corporate limits of any city or town the owner or owners thereof shall pay a county license tax to the county where the business is located equal in amount to the sum total of the license tax assessed for both the municipality and county for each such place of business located within the limits of a city or town: Provided, further, That no fractional license shall be issued for State, county or municipal purposes. The dealers paying the same, and receiving license therefor shall be authorized to sell spirituous, vinous or malt liquors, or any such liquors, but neither spirituous, vinous or malt liquors shall be permitted to be sold unless said license tax is first paid and a license therefor first taken out; and Provided further, That no such license shall issue until a permit to sell such spirituous, vinous or malt liquors has been procured for the district for which such license is sought as required by the Constitution and laws of this State.

446. Distillers and brewers of liquors.—Distillers of spirituous, and brewers of malt liquors, shall pay to the State a license tax of one hundred dollars in each county for each place of business: Provided, That nothing in this chapter shall be so construed as to require a license tax from any person who shall manufacture wines or brandies from sweet potatoes or other products of vines, fruit trees, or strawberry bushes, and pineapples grown in this State: Provided, That no license shall be issued to any person to sell or distill spirituous, vinous or malt liquors in any county or election district when such sale has been prohibited in pursuance of the Constitution and laws of this State; and Provided, further, That no license issued to distillers of spirituous and brewers of malt liquors shall be so construed as to permit such distiller or brewer to sell his products in quantities of less than fifty gallons of spirituous and ten gallons of malt liquors either in bottles or casks, except to regular licensed liquor dealers. Ib., Sec. 9.

447. Clubs.—Persons associating themselves together as a club, whether incorporated or not incorporated, and selling spirituous, vinous or malt liquors, or any preparation composed wholly or in part of such liquors to its members and to its non-resident guests only, shall pay license tax as follows: If composed of less than seventy-five members, one hundred dollars; if composed of more than seventy-five members and less than one hundred and fifty, one hundred and fifty dollars: Provided, That this section shall not ap- Ib., Sec. 10, amended.

ply to a club, incorporated or not incorporated, used for the purpose of evading the payment of license tax on liquors as hereinbefore provided, but such club shall be subject to the payment of the license tax of seven hundred and fifty dollars hereinbefore required.

Ib., Sec. 11, amended.

448. Domestic wines or brandies.—Makers of domestic wines or brandies shall be permitted to sell the same in quantities of not less than one quart without being considered dealers in liquors: Provided, That should any maker of domestic wines mix the same with any other liquors or adulterate the same he shall be considered a dealer in liquors and shall be required to take out a license as a liquor dealer: Provided, That druggists may sell such mixtures as are made official in the United States Dispensatory, without being required to take out a license to sell spirituous, vinous or malt liquors.

Ib., Sec. 12.

449. Selling liquors on boats and railroad cars.—Dealers in spirituous, vinous or malt liquors who carry on or conduct business on any boat, vessel or railroad car in this State, shall be required to take out one State and county license for each boat or vessel or railroad car in which their business is carried on, which shall be taken out in the county where the principal business of each boat, vessel or railroad is located, and which license shall authorize them to sell liquor anywhere along its lines of travel: Provided, That if they sell liquors to other persons than the passengers or crew of such boat, vessel or railroad car, at any stopping or landing place in any other county than in the one in which they obtained license, they shall be subject to the license required to be paid by liquor dealers in such county, city or town, at which they have stopped or landed. When the principal business office of such boat, vessel or railroad car is not located in this State, the license herein required shall be taken out in the county in which they first engaged in the business of selling liquors.

Ib., Sec. 12.

450. Not to sell on Sundays.—No license issued under the provisions of this act shall allow the holder thereof to sell such liquors as are described in this chapter between the hours of twelve o'clock Saturday night and twelve o'clock Sunday night, and the collector issuing any license under this chapter shall have written upon its face in red ink the words, "This license does not allow the holder to sell liquors between the hours of twelve o'clock Saturday night and twelve o'clock Sunday night," and if the holder sells liquors at times in which this chapter prohibits the selling of the same, he shall be deemed guilty of selling liquor without a license.

451. Open door on Sunday prima facie evidence of sale.—If any door of any place where such liquors, wines or beer are sold, be opened on Sunday, or if any person go into such place on Sunday it shall be prima facie evidence of the sale of such liquors. Ib., Sec. 12.

452. Manufacturers and distillers of turpentine and rosin. Distillers and manufacturers of spirits of turpentine and rosin for each still in operation during any portion of the year shall pay a license tax of fifty dollars, twenty-five of which shall go to the State and twenty-five to the county. Ib., Sec. 15.

453. Phosphate plants.—Owners, agents or operators of phosphate plants in operation, shall pay twenty-five dollars for every plant in operation. Ib., Sec. 15.

454. Saw mills and ice factories.—Owners of saw mills having a daily capacity of fifty thousand feet or over, twenty-five dollars; having a daily capacity of twenty-five thousand feet and under fifty thousand feet, ten dollars and fifty cents; having a daily capacity of ten thousand feet to twenty-five thousand feet, seven dollars and fifty cents; owners or operators of ice factories or plants having a daily capacity of one hundred tons or over, fifty dollars; having a daily capacity of over fifty and less than one hundred tons, twenty-five dollars; having a daily capacity of twenty-five to fifty tons, fifteen dollars; having a capacity of less than twenty-five tons, ten dollars. Ib., Sec. 15.

455. Cotton seed oil.—Manufacturers of cotton seed oil, shall pay a license of twenty-five dollars. Ib., Sec. 15.

456. Shingle mills.—Shingle mills having a capacity of twenty-five thousand shingles per day, twenty-five dollars; having a capacity of less than twenty-five thousand shingles per day, ten dollars. Ib., Sec. 15.

457. Crate, sash and door manufacturers.—Crate manufacturers, and sash and door manufacturers, fifteen dollars each. Ib., Sec. 15.

458. Wholesale dealers in fresh meats.—All wholesale dealers in fresh meats packed or refrigerated shall pay to the State a license tax of one hundred dollars in each county, and for each place of business. Ib., Sec. 16.

(Nurserymen and fruit tree dealers: See Ch. 5380, Appendix.)

459. Merchants, storekeepers and druggists.—Merchants, storekeepers and druggists with a capital stock of less Ib., Sec. 17.

than one thousand dollars, shall pay to the State a license tax of three dollars per thousand, and for every additional thousand dollars or fraction of a thousand shall pay a license tax of three dollars per thousand up to ten thousand dollars. In excess of ten thousand dollars, two dollars on each additional thousand, in each county and for each place of business.

Ib., Sec. 18.

460. Cigars and tobacco.—Dealers in cigars, cigarettes and tobacco who pay no other license tax, shall pay to the State a license tax of five dollars: Provided, That nothing in this act shall be so construed as to require from farmers who are not dealers in general merchandise a license tax on the sale of manufactured tobacco to laborers on their farms.

Ib., Sec. 19.

461. Lung testers, penny in slot machines, etc.—All owners of lung testers, striking machines, weighing machines, chewing gum stands, automatic penny in the slot machines or any device of a similar nature, shall pay to the State a license tax of five dollars for each machine.

Ib., Sec. 20.

462. Sewing machine agents.—Each sewing machine agent shall pay to the State a license tax of ten dollars in each county in which they transact business: Provided, That any person keeping sewing machines for sale, as other merchandise shall not be considered a sewing machine agent under this chapter.

Ib., Sec. 21.

463. Lightning rod agents.—Each lightning rod agent shall pay a license tax of one hundred dollars in each county where they transact business or attempt to transact any business.

Ib., Sec. 22.

464. Insurance companies.—Each insurance company, association, firm or individual doing business in this State, including corporations, associations engaged in the business of insuring accidents to the person, acting as surety upon bonds, guaranteeing the fidelity of employees, and insuring employees against liability for accident to employees, and life insurance companies, shall pay to the State Treasurer a license tax of two hundred dollars; plate glass insurance companies shall pay to the State Treasurer a license tax of fifty dollars; and in addition thereto, each of said companies doing business in this State, shall, upon the first day of January of each year pay to the State Treasurer two per cent. upon the gross amount of receipts of premiums from policyholders in this State.

Ib., Sec. 23.

465. Local insurance agents.—Each insurance company, or association mentioned in the preceding section doing bus-

iness in this State, shall, upon the first day of October, furnish to the State Treasurer the name and address of each agent or solicitor authorized to write insurance in this State; for each local agent or solicitor, each insurance company shall pay to the State Treasurer a license tax of five dollars, and it shall be the duty of the State Treasurer to transmit to the county tax collector the name and address of every such agent as resides respectively in such county. Counties, cities and towns may require a license tax of any such agent not to exceed fifty per cent. of the State tax.

466. Traveling insurance agent.—Each insurance company shall pay to the State Treasurer for each traveling agent or solicitor doing business in this State, a license tax of twenty-five dollars for such agent. Counties, cities and towns may require from any such traveling agent or solicitor a license tax of five dollars for each county he does business in. Ib., Sec. 24.

467. Agent for building and loan association.—All agents or solicitors of any building and loan association, or any loan association shall pay to the State a license tax of ten dollars for each county in which he solicits or acts as agent. Ib., Sec. 25.

468. Keepers of livery, feed or sale stables.—Keepers of livery, sale or feed stables, or other persons who keep less than four horses or mules for hire, sale, feed or for the purpose of conveying passengers and making a charge therefor, shall pay a license tax of five dollars; when not less than four, nor more than eight horses or mules are kept for hire, sale or feed, shall pay a license tax of ten dollars; when not less than eight nor more than twelve horses or mules are kept for hire, sale or feed, shall pay a license tax of fifteen dollars; when not less than twelve nor more than twenty horses or mules are kept for hire, sale or feed, shall pay a license tax of twenty-five dollars; when not less than twenty nor more than forty horses or mules are kept for hire, sale or feed, shall pay a license tax of forty dollars; when not less than forty horses or mules are kept for hire, sale or feed, shall pay a license tax of fifty dollars. Ib., Sec. 26.

469. Keeper of stallion or jack.—Each keeper of a stallion or jack for profit shall pay a license tax of five dollars. Ib., Sec. 26.

470. Shows or circuses.—All shows or circuses exhibiting or giving performances within tents, whether covered or uncovered, with or without horses, shall pay to the State a license tax of fifty dollars for each county in which they give or attempt to give a performance. Ib., Sec. 27.

Ib., Sec. 28.

471. Theatrical shows, minstrel troupes, traveling exhibitions.—Theatrical shows, minstrel troupes, or other traveling exhibitions (this section shall not apply to shows or circuses), shall pay to the State a license tax of twenty-five dollars for each day in each county in which they may exhibit: Provided, That managers of theatres or halls employing travelling troupes, theatrical, operatic or minstrel, giving performances in buildings fitted up for such purpose, shall be allowed to give as many performances in such building or theatre as they wish on payment of the following license: In cities or towns of twenty thousand or more inhabitants, two hundred dollars per annum; in cities or towns of fifteen to twenty thousand inhabitants, one hundred and fifty dollars per annum; in cities or towns of ten to fifteen thousand inhabitants, one hundred dollars per annum; in cities and towns of five to ten thousand inhabitants, fifty dollars per annum; in cities and towns of less than five thousand inhabitants, ten dollars per annum: Provided, That this section shall not apply to local amateur performances.

Ib., Sec. 29.

472. Variety shows.—All shows commonly known as variety shows of a theatrical, minstrel or spectacular character, and all shows that combine any of said characteristics, in which females are employed as waiters, shall pay a license tax of fifty dollars for each performance given by them.

Ib., Sec. 30.

473. Hobby horse machines, merry-go-rounds, etc.—Every person who shall exhibit or operate hobby horse machines, merry-go-rounds, or other like machines, whether the same is propelled by hand, horse, steam or other power, on which persons are charged for riding, shall pay to the State a license tax of twenty-five dollars in each county for the privilege of operating the same.

Ib., Sec. 31.

474. Peddling boats.—All owners or managers of each boat used wholly or in part for peddling, of less than twenty tons, shall pay a license tax of ten dollars; for more than twenty tons, shall pay a license tax of thirty dollars.

Ib., Sec. 32.

475. Traveling book and picture agents.—All traveling book or picture agents shall pay to the State a license tax of ten dollars in each county: Provided, That agents for the sale of religious books only shall not be required to pay a license tax.

Ch. 5192, Acts 1903, Sec. 1.

476. Emigrant agents.—All persons, whether acting as individuals or as emigrant agents or the employer or employee of such agents, who shall seek to influence and by such persuasion cause the removal of any inhabitant from

this State, or who shall seek to entice away from this State labor in this State by any representation whatever, shall be subject to a license tax of five hundred dollars in each county where such business is carried on.

(For penalty, see Section 3455.)

477. Hawkers and peddlers.—All hawkers and peddlers shall pay a license tax of three hundred dollars; Provided, That a license tax shall not be required of any person selling meat, vegetables, fruit or other products grown in this State and sold by the owner or agent of the owners for the owner's benefit. Ch. 5106, Acts 1903, Sec. 33.

478. Money lenders.—All persons, firms, corporations, associations or their agents, doing the business of lending or advancing money for which interest, commission, inspection fees, or other remuneration is charged in excess of ten per cent. per annum secured by mortgage, bill of sale, power of attorney, or other legal transfer of personal property as security for any such loans or advances; or any person, firm, corporation or association doing the business of procuring any such loans or advances for borrowers upon any such securities, and charging such borrowers commission, inspection or other fees for their services, where such business is carried on or conducted in cities or towns of ten thousand inhabitants or upwards, shall pay to the State a license tax of one hundred dollars per annum for each place of business maintained. Ib., Sec. 34.

479. Pawn brokers.—All pawn brokers shall pay to the State a license tax of one hundred dollars for each place of business. Ib., Sec. 34.

480. Enlarging photographs.—All persons soliciting orders for enlarging photographs shall pay to the State a license tax of ten dollars in each county: Provided, That no licensed dealer in merchandise shall be required to pay such license tax: Provided, That said dealer does not solicit orders except in his place of business. Ib., Sec. 35.

481. Keepers of billiard and pool tables, bowling alleys, skating rinks, and shooting galleries.—Keepers of billiard tables, ball pool tables, or other tables where billiards or pool of any kind is played, when such tables are kept for other than private use, shall pay to the State in each county and for each table, a license tax of fifty dollars; and all keepers of bowling alleys, skating rinks and shooting galleries when kept for other than private use, for each gallery, rink or alley, shall pay to the State in each county and for each gal- Ib., Sec. 36, as amended by Ch. 5379, Acts 1905.

lery, rink or alley a license tax of fifteen dollars: Provided, That the license for billiard and pool tables outside of and disconnected with a barroom, or its proprietor, shall pay a tax of ten dollars; Provided, that if any holder of a license under this act shall permit any person to play billiards or pool or any other game for money or other things of value upon tables licensed under this act he shall be deemed guilty of a misdemeanor and upon conviction, be punished by imprisonment for not exceeding six months in the county jail, or by fine not exceeding one hundred dollars.

Ib., Sec. 37.

482. Hotels or boarding houses.—Keepers of hotels or boarding houses having accommodation for two hundred or more lodgers or boarders, shall pay a tax of one hundred and fifty dollars; with accomodation for one hundred to two hundred lodgers or boarders, one hundred dollars; with accommodation for from seventy-five to one hundred lodgers or boarders, fifty dollars; for from fifty to seventy-five lodgers or boarders, twenty-five dollars; with accommodation for from twenty-five to fifty lodgers or boarders, fifteen dollars; with accommodation for from fifteen to twenty-five lodgers or boarders, ten dollars; with accommodation for from ten to fifteen lodgers or boarders, five dollars: public eating saloons or restaurants having accommodation for seating twenty or more persons, fifteen dollars; and those less than twenty persons, five dollars. Accommodation for lodgers shall be construed to mean the number of beds habitually kept for such lodgers, and not the number of rooms contained in the house.

Ib., Sec. 38.

483. Foreign building and loan associations.—Foreign building and loan associations shall pay to the State a license tax of two hundred and fifty dollars in each county in which they do business.

Ib., Sec. 39.

484. Steam laundries.—All steam laundries and laundries known as Chinese laundries shall pay a license tax of ten dollars.

Ib., Sec. 40.

485. Dog and pony shows.—All dog and pony shows shall pay to the State a license tax of ten dollars in each county in which they give a performance.

Ib., Sec. 41.

486. Trading stamp companies.—All persons, firms or corporations known as trading stamp companies, shall pay to the State a license tax of one thousand dollars in each county where they transact any business.

Ib., Sec. 42.

487. Merchants using trading stamps.—All merchants using trading stamps shall pay to the State a license tax of

person or persons obtaining such license shall keep the same exhibited conspicuously at their place of business, and upon failure so to do, shall be subject to another license for engaging in or managing the business, profession or occupation for which such license was obtained.

504. County judge to furnish statement to Comptroller and publish list.—Each county judge shall transmit to the Comptroller on the first Monday in each month in each year, a statement showing the amount of money received for State and county licenses under the provisions of this chapter, and shall publish said list in some newspaper printed in said county by one insertion in each year, and for the publication of said statement the State shall pay two-thirds of the cost and the county one-third; and to the county commissioners a statement of all moneys received for county license during the preceding month, with the name of each person paying the same, the amount paid by each, the date of each payment and the business or profession for which the same was issued; and said statement shall be signed by the tax collector and the county judge; and the tax collector shall pay the amount collected by him for State licenses to the State Treasurer on the first Monday in each month, and at the same time shall pay to the county treasurer the amount collected by him for county licenses. Ib., Sec. 59.

505. County judge to report to the grand jury.—The county judge shall report to the grand jury at each term of the court, or the clerk of the circuit court when no grand jury is ordered, which shall be filed in said clerk's office, the names of all persons that have procured licenses under the provisions of this act. Ib., Sec. 60.

506. Blanks furnished by Comptroller.—The Comptroller of the State of Florida shall furnish such blanks as are required for licenses in book form to the county judge of each county who shall give his receipt therefor, stating the number of blank licenses in each book received, and the county judge shall return such books for examination at any time when requested to do so by the Comptroller. Ib., Sec. 61.

507. Exception.—Nothing in this chapter shall be construed as in any way abridging or limiting the powers which have been or may be granted to any municipal corporation by special act or charter act for the purpose of requiring the payment of license taxes. Ib., Sec. 63.

508. Poll tax.—A poll tax of one dollar shall be levied upon each male person over the age of twenty-one years, and under the age of fifty-five years, except such as have lost Ch. 4322, Acts 1895, Sec. 14.

a limb in battle, which tax shall be paid into the county school fund, and shall be collected when taxes on property are collected. It shall be illegal for a collector to give any receipt for taxes on any property to persons owing poll tax until the poll tax is paid, and the collector shall on the first day of each month make out a statement giving the names of the parties who have paid their poll taxes, and present the same sworn to by said collector to the county commissioners at their regular meeting and present the receipt of the county treasurer for the same.

509. Tax collector to furnish list of polls to school board. It shall be the duty of the tax collector in each county to file, on or before the tenth day of every month with the county board of public instruction a certified list of the names of all persons whose poll taxes were paid during the previous month, giving the year for which payments were made.

Ch. 4666, Acts 1899, Sec. 1.

510. List of taxable persons and property.—Between the first day of January and the first day of July in each year, the assessor in each county, with the aid of such assistant assessors as may be nominated by the assessor and appointed by the county commissioners, shall ascertain by diligent inquiry the names of all taxable persons in his county, and also all their taxable personal property and all taxable real estate therein on the first day of January of such year, and shall make out an assessment roll of all such taxable property; and the assessor or his assistant shall make at least one visit to each precinct for the purpose of receiving tax returns, after having given ten days' notice of such visit, between the first day of January and the first day of March; and tax returns by owners or agents must be made between the first day of January and the first day of April.

Ch. 4322, Acts 1895, Sec. 15.

Directory and not a limitation as to time of making assessment.—Stieff v. Hartwell, 35 Fla., 606, 17 So. Rep., 899. No lien upon real estate for taxes until fixed by assessment.—Bloxham, Compr, et al., v. F. C. & P. R. R. Co., 35 Fla., 625, So. Rep., 902. Lien not divested by sale of property.—Ib.

511. Assessment of personal property to be separate from real property.—The assessment of personal property shall be made separate from the assessment of real estate, but personal property shall be responsible for the taxes on real estate, and real estate shall be responsible for the taxes on personal property, and both shall be responsible for a poll tax.

Ib., Sec. 15.

512. Assessment roll.—The tax assessor shall set down in the assessment roll in separate columns according to the best information he can obtain:

Ib., Sec. 16.

First. The name of the person subject to poll tax, or owning personal property in the county, and the number of their district.

Second. The number of neat and stock cattle.

Third. The number of horses, asses and mules.

Fourth. The number of sheep and goats.

Fifth. The number of swine and dogs.

Sixth. The value of all household and kitchen furniture, books, watches, silverware, accounts, moneys in possession or at interest, or capital invested in trade, including notes and mortgages except those given for purchase money.

Seventh. The full cash value of the personal property owned by, or to be taxed to such persons as provided by law.

The tax assessor shall give to each person or his agent, at the time of assessing the property, one exact copy or duplicate roll of the property assessed; and where persons send in the list of their property by mail, the assessor shall be required to give such duplicate roll, only upon demand by said person, and upon his enclosing a stamp to return said roll.

513. Assessment as trustee, etc. — When a person is assessed as a trustee, guardian, executor or administrator a designation of his representative character shall be added to his name, and such assessment shall be entered upon a separate line from the individual assessment. Ib., Sec. 17.

514. Comptroller to furnish blank assessment rolls and lists of certain lands.—The Comptroller shall prepare blank assessment rolls which shall be forwarded to the several assessors previous to the first day of January for each and every year. He shall on or before the first day of May of each year obtain from the United States land office in this State, and from the several railroad land grant companies or corporations, lists of lands for which patents were issued, or which were sold or contracted to be sold during the previous year, and certify them for taxation, together with the various classes of State land sold during the same year, to the assessors of the counties in which such lands may be situated. Ib., Sec. 18.

515. Assessor to require oath as to personal property. Complaint as to value.—Every assessor shall require any person giving in the amount or list of his personal property to make oath before him that the same is full and correct, and any person refusing to take such oath shall not be permitted afterwards to reduce the valuation made by such assessor of his personal property for that year. The valuation of any item of property by the tax payer shall in no case Ib., Sec. 19.

prevent the assessor from determining its true value, and if he shall ascertain that the valuation of any item of property is too small, he shall increase the same to its true value. If any tax payer feels aggrieved at the valuation placed upon any item of property by the tax assessor, he shall complain to the county commissioners at their meeting in August, that the valuation may be properly adjusted.

Hb., Sec. 20.

516. When assessor to value personal property.—All personal estate liable to taxation, the value of which shall not have been specified under oath as aforesaid, shall be estimated by the assessor at its true cash value according to his best judgment and information, and his failure by neglect or refusal to make such estimate shall be a cause of suspension by the Governor.

Ch. 5229, Acts 1903, Sec. 1.

517. Agricultural statistics.—It shall be the duty of each tax assessor in this State, when listing property for taxes or at any other time, to call on all residents of their respective counties, engaged in agriculture, horticulture and stock raising, for necessary facts and information for filling out such blanks as the Commissioner of Agriculture may furnish him, for statistical information, and for such service each tax assessor shall be paid ten cents for each resident of the county engaged in the occupation heretofore mentioned, from whom information for filing out said blanks is obtained and listed, to be paid by their respective counties in the same manner that the fees for assessing State and county taxes are paid. Should any assessor of taxes fail or refuse to comply with any of the provisions of this section and the instructions of the Commissioner of Agriculture, the board of county commissioners, shall, on notice from the Commissioner of Agriculture, withhold the fees of such assessor for assessing State and county taxes, until notified by the Commissioner of Agriculture that such assessor has complied with the law; and tax assessors are hereby required to fill out and return said blanks to the board of county commissioners of their respective counties not later than September of each year. It shall be the duty of the assessor to attach his certificate, sworn to before a proper officer authorized to administer oaths, that said statistical report is full, true and correct, to the best of his knowledge and belief. It shall be the duty of the board of county commissioners, not later than at their regular meeting in October in each year, to examine the said return of agricultural statistics furnished by the county tax assessor, and if found correct, to forward the same to the Commissioner of Agriculture not later than October of each year, with a certificate of the chairman of the board of county commissioners that the board has ex-

amined the roll of statistics furnished by the assessor and approves same.

518. Mode of assessing land.—The lands in each county in this State, subject to taxation and not included in the limits of incorporated towns and cities and laid off in lots and blocks, shall be assessed by townships, and for purposes of taxation all non-bearing fruit trees shall not be considered as adding any value to said land. And in making the assessment the assessor shall begin with the lowest numbered section in each township, and shall assess each lot, tract or parcel of land therein, in accordance with the description as returned for taxation by the owner or the agent: Provided, The assessor may correct any error in the description so returned; and if the owner or agent fails to make such returns the assessor shall assess all lands not returned, according to the government survey, and can assess in one assessment all the lands in a section belonging to the same owner, or assessed as "unknown," and the assessor shall continue in his assessment roll the description and assessment of the remaining sections in the township in the order of their numbers and in the same manner he shall then assess all the other townships in his county in like manner: Provided, That when private surveys of land or descriptions by metes and bounds have taken the place of government surveys or descriptions, and the land is known, designated and described only by such private surveys or metes and bounds, the description in the assessment shall be made in acordance with such surveys or descriptions as recorded in the office of the clerk of the circuit court; and when Spanish grants or donations exist in any county in this State which have not been surveyed and platted, or which plats are not recorded in the office of the clerk of the circuit court, the assessor for such county shall assess the several tracts of land owned in such grants, not platted as above, describing the same by reference to the deed of record, giving the book and page of record as appears in the office of the clerk of the circuit court, and if the deed conveying such tracts is not recorded upon its production to the assessor he may describe the land as being that tract, lot, piece or parcel described in a deed executed by the grantor (naming him), to the grantee (naming him), therein, and bearing date (giving the date shown by deed), and such description shall be valid and sufficient for all purposes of the assessment. Ch. 4322, Acts 1895, Sec. 21.

Assessment identify the land.—Grissom v. Furman, 22 Fla., 581.

519. Maps to be furnished the assessor. — The county commissioners of each county in this State shall purchase Ib., Sec. 21.

and have mounted on cloth, and then bound in volume or volumes, two complete sets of photo-lithographed township maps in their respective counties, one to be kept in the office of the clerk of the circuit court and the other in the assessor's office in their several counties; and all these maps and all maps of information which may come into the hands of the several assessors which may be used in preparing the assessment roll, shall remain in the assessor's office, and be delivered to his successor in office: Provided, That any maps owned by any tax assessor may be purchased at their discretion by the county commissioners at a reasonable price. And should any assessor so fail to deliver said maps as above provided, his bond shall be responsible to the value of said property, as required for the faithful discharge of his duty.

Ib., Sec. 21.

520. Assessment of real estate in towns and cities.—The tax assessor shall make the assessments of real estate in cities and towns by lots and blocks, in regular order, throughout the original plan of the city or town, and all additions thereto, all the lots of a block to be listed in their regular order under the letter, number or other designation of the block as filed and recorded in the office of the clerk of the circuit court, blocks also to follow in their regular order, (and all lots or sub-divisions of a block, when belonging to one owner and being numbered consecutively and lying contiguously, may be assessed together and the taxes extended on one line), each of the smallest sub-divisions of such block to be entered and the taxes thereon to be extended separately.

Ib., Sec. 21.

521. Assessors to leave space in making entries.—Assessors in making up the assessment rolls are directed to give sufficient space for the tax collector to make necessary entries; and the clerks of circuit courts in recording the report of tax sales are directed to give necessary space for entries of redemption: Provided, That no person shall be required to pay taxes on entire land assessed in order to get receipt for taxes on land upon which such person desires to pay taxes.

Ib., Sec. 22, as amended by Ch. 5380, Acts 1905.

522. Further provisions concerning assessment of land.—The assessor shall ascertain by personal inspection, where not already sufficiently acquainted therewith, the value of the lands and assess them at their full cash value in the name of the owner or legal representative of the owner or as "unknown," and set down in the assessment roll following and opposite the description of the lands the name of the owner or his or her legal representative; and when the land has not been returned for assessment on or before the first day of

April of each year, by the owner or legal representative of the owner, the assessor shall enter the word "unknown" in the column of the assessment roll provided for the name of the owners, or his or her legal representatives. The assessment book as provided by the Comptroller shall contain an alphabetical index in which the assessor shall be required to indicate the name and the postoffice address, if it can be ascertained, of each person whose name appears upon the assessment roll, and shall indicate opposite such name, as indexed, the page upon which any tax or taxes may be found to be assessed. In case any land shall be timbered, and the timber or the right to turpentine same shall belong to a person other than the owner of the land, the assessor shall assess the value of the land independent and distinct from the value of the timber and the turpentine privileges and shall assess the value of such timber and of such turpentine privileges separate and distinct from the said land and from each other, assessing the value of the land and of the timber and of the turpentine privileges to the owners respectively thereof. The taxes so assessed upon the said land, the said timber, and the said turpentine privileges respectively shall be collected as hereinafter provided, as if each of said interests in said land were land itself.

Assessment of land under Chapter 3099, act of 1879, must be to owner or occupant or as "unknown" or to trustees, guardian, executor or administrator in representative capacity; assessment to "estate of Parkhurst" is a nullity and sale thereon void.—L'Engle v. Wilson, ex., 21 Fla., 461. Assessment in name of person other than owner, such person not being occupant, under Chapter 3099, is void.—L'Engle v. F. C. & W. R. Co., 21 Fla., 353. The tax under which a second sale was had was correctly assessed against a mortgagor in possession during the time allowed for redemption from first sale.—Spratt v. Price, 18 Fla., 290. Under acts of 1872 and 1874, description of land assessed for taxes is sufficient if the land intended can be ascertained by looking at the entire roll.—Sams v. King, 18 Fla., 558. Assessor may raise valuation as returned.—Town of Kissimmee v. Cannon, 26 Fla., 3, 7 So. Rep., 523. Assessment must be made by officer.—City of Tampa v. Kannity, 39 Fla., 386, 23 So. Rep., 416. Illegal assessments.—McKeown v. Collins, 38 Fla., 276, 21 So. Rep., 103; Levy v. Ladd, 35 Fla., 391, 17 So. Rep., 625; Graham et al., v. Florida Land and Mortgage Co., 33 Fla., 356, 14 So. Rep., 796. Omission of property from assessment rolls, effect.—City of Tampa v. Kannity, supra. Assessed as "unknown" void when.—Daniel v. Taylor et al., 33 Fla., 636, 15 So. Rep., 313; Brown v. Castellaw, 33 Fla., 204, 14 So. Rep., 822.

523. Assistant assessors.—The county commissioners of the several counties, when it is deemed necessary for assessment purposes, may, before the first day of January of each year, divide their respective counties into taxation districts, and the tax assessor may employ for each district an assistant assessor of taxes, resident of the district, who shall take the oath of office required by law for the faithful discharge of the duties of the office of the tax assessor, and shall give good

Ib., Sec. 23.

and sufficient bond for the faithful performance of his duty as assistant assessor of taxes, which bond shall be approved by the county commissioners of said county, and whose duty it shall be to assess the property, real and personal, in his district, as provided by law, making a complete list of all the lands subject to taxation, and giving the value thereof, and giving the names of the owners or persons making the tax returns. The assistant assessor shall begin the assessment on the first day of January, and shall complete the same as soon as possible, and he shall return his list of assessment, as made out, to the county assessor immediately upon the completion thereof, and not later than the first day of May, and the two shall then revise such list at such stated times, before the first day of June, as the county assessor shall designate, and make such changes as may be agreed upon between them, as to description and value of property; and in case of disagreement the matter shall be referred to and decided by the board of county commissioners when they meet to review and equalize the assessment of the county. The tax assessor may remove any assistant assessor who fails to discharge his duty properly, or to complete his work within the prescribed time, and he shall have power to fill vacancies in that office at any time when he may deem it necessary. The assistant assessor of taxes shall receive as compensation for his services such fees as may be agreed upon by the county assessor, which compensation shall be paid out of the fees or compensation allowed the county assessor for such services.

Ib., Sec. 23.

524. Assessment of land previously omitted. — If any assessor when making his assessment shall discover that any land in his county has, for any reason, escaped taxation for all or any of the three previous years, or that any land was illegally sold for taxes and was then liable to taxation, he shall in addition to the assessment of such land for that year, assess the same separately for such year or years that may have escaped taxation, or was so illegally sold, at the cash value thereof for that year, noting distinctly the year when such land escaped taxation, and such assessment shall have the same force and effect as it would have had, if made in the year that the same escaped taxation; and taxes shall be levied and collected thereon, in like manner and together with the taxes of the year in which the assessment is made, but no lands shall be assessed for more than three years arrears of taxation, and all lands shall be subject to such taxation, so escaping taxation, to be assessed into whosoever hands they may come: Provided, The assessor shall not assess any lot or parcel of land, certified or sold to the State, for any previous year, unless such lot or parcel of land so

Ib., Sec. 24, as amended by Sec. 1, Ch. 4663, Acts 1899.

certified or sold shall be included in the list furnished by the Comptroller to the assessor as now provided by law.

Bloxham, Compt., et al., v. F. C. & P. R. R. Co., 35 Fla., 625, 17 So. Rep., 902.

525. Review by county commissioners. — The assessors shall complete the assessment rolls of their respective counties on or before the first Monday of July in every year, on which day such assessors shall meet with the board of county commissioners at the clerk's office of their respective counties for the purpose of reviewing and equalizing the assessment, and may continue in session for that purpose from day to day for one week, or as long as shall be necessary: Provided, That the county commissioners of any county may, if they deem it necessary, extend the time for the completion of such assessment-roll. Should the board increase the value fixed by the assessor of any real estate, due notice thereof shall be given to the owner or agent of such property by publication in a newspaper published in such county, or by posting a notice at the court house door if there be no newspaper published in the county, at least fifteen days before the board will be in session, to hear any reasons that such persons may desire to give why the valuation fixed by the board shall be changed. The board of county commissioners shall meet on the first Monday in August of each year for the purpose of hearing complaints from the owner or agent of any real estate, the value of which shall have been changed by them, and for that purpose the board shall sit as long as it may be necessary. Ch. 4322, Acts 1895, Sec. 25.

526. Equalization of assessment.—The board of county commissioners shall have full power to equalize the assessment of the real estate in their respective counties, and for that purpose may raise or lower the value fixed by the assessor on any particular piece of real estate, but cannot raise or lower the entire assessment of the county, their powers being only to equalize. It shall be unlawful for the county commissioners to lower the assessment of any personal property given in by the owner or assessed by the assessor, which shall not have been specified under oath. The county commissioners failing to obey this provision shall be subject to a fine of fifty dollars each, and suspension. Ib., Sec. 26.

527. No compensation in certain cases.—The tax assessors of this State shall receive no compensation for assessing lands which are not subject to taxation. Ib., Sec. 27.

528. Clerk to act, when.—If from sickness any assessor cannot attend at the time and place prescribed above, he shall Ib., Sec. 28.

transmit his assessment roll to the clerk, and the county commissioners may review and equalize the assessment. In case the assessor in any county shall neglect to assess the property of the county, previous to the first Monday in August of any year, it shall be within the power and discretion of the county commissioners to direct the clerk to make or complete the assessment. In case the clerk shall make or complete the assessment, he shall perform all duties which the assessor would otherwise perform. All assessments shall be legal which shall be assessed to the same owners as for the previous year: Provided, That the owner does not return it for taxation; and the county commissioners shall have power to appoint a day for the purpose of equalizing the assessment so made, and shall proceed in the same manner as provided in Section 525, allowing at least fifteen days between the time of meeting at which the assessed value of any real estate may be changed by them, and the time for hearing complaints from the persons aggrieved.

Ch. 4885, Acts 1901, Sec. 1.

529. Completing roll. Examination by commissioners, etc.—It shall be the duty of the assessor in each county, immediately after the assessment of the county has been reviewed and equalized by the county commissioners, and the amount to be raised for State and county purposes and special tax school districts or other special tax purposes determined, to calculate and carry out the total amount of State taxes and the total amount of county taxes, and the total amount of school district taxes, or other special taxes, in separate columns prepared for that purpose in the assessment roll, setting opposite to the aggregate sum set down as the valuation of real and personal estate, the respective sums assessed as taxes thereon in dollars and cents, rejecting the fraction of a cent if less than one-half, and counting as one cent fractions of one-half and over: Provided, That only three separate columns for entering taxes shall be provided in the assessment roll for any county except where special request is made by the board of county commissioners for an extra column for other special taxes, which request shall be made to the Comptroller before the assessment rolls are prepared. He shall also add up the columns of assessment and taxes contained in the assessment rolls, and make therein such recapitulatory tables as may be required by the Comptroller; and the said assessor shall make out two fair copies of the assessment rolls when thus completed, and shall annex to the original and each copy the affidavit in Section 533, which copies, with the original, he shall turn over to the board of county commissioners at a meeting to be held on the first Monday of October of each and every year for that purpose, at which meeting the county commissioners shall examine

and compare such original and two copies, and cause the assessor, who shall attend such meeting from day to day, to correct all mistakes and inaccuracies in descriptions or other character; and after such books shall have been examined and corrected, the board of county commissioners shall endorse on them a certificate that they have so examined them, and that they are correct, which certificate shall be signed by at least three of the members of the board, and the assessor shall then issue and annex to one of said books the warrant as hereinafter provided, and a copy of said warrant shall be recorded in the minutes of the board of county commissioners, and the county commissioners shall not have power to change any assessment after the copies have been delivered to the collector and Comptroller and the original filed with the clerk of the court.

530. Division of funds.—The Comptroller and Treasurer shall cause a proper division of the funds assessed in accordance with law under the head of State taxes, on the assessment roll, at the time such taxes are paid over to the State Treasurer by the collector; and the Treasurer shall credit the funds so received to general revenue, common school fund (one mill tax), and such other funds as may by law be required to be separately set apart, and each fund shall bear its own portion of the expense.

Ch. 4322, Acts 1895, Sec. 30.

531. Disposition of roll.—The assessor shall transmit one copy of his assessment roll to the Comptroller, and the other, to which the warrant shall be added, shall be delivered to the tax collector, and the original shall be filed in the office of the clerk of the circuit court, together with the tax assessor's books, after he has completed his assessment: Provided, That the tax assessor shall, for assessment purposes, have the right to use any assessment roll on file in the office of the clerk of the circuit court, and the clerk shall deliver any such assessment roll to the tax assessor and take his receipt for the same. The tax assessor shall be responsible for any such assessment roll while in his custody, and he shall return the same to the office of the clerk of the circuit court as soon as the assessment roll shall be completed.

Ch. 4515, Acts 1897, Sec. 2.

532. Duty of county commissioners as to rate of taxation.—The county commissioners shall determine the amount to be raised for all county purposes and shall enter upon their minutes the rate to be levied for each fund respectively, and shall ascertain the aggregate rate necessary to cover all such taxes and report the same to the assessor, who shall carry out the full amount of taxes for all county purposes under one heading in the assessment roll to be provided for that

Ch. 4885, Acts 1901, Sec. 2.

purpose; and the county commissioners shall notify the clerk and auditor of the county, also the treasurer thereof, of the amount to be apportioned to the different accounts out of the total taxes levied for all purposes, and the county treasurer in issuing receipts to the collector shall state in each of his receipts, which shall be in duplicate, the amount apportioned to each fund out of the payment made to him by the collector, and when any such receipts shall be given to the collector by the county treasurer, he shall immediately file one of the same with the clerk and auditor of the county who shall credit the same to the collector with the amount thereof and shall make out and deliver to the collector a certificate setting forth the payment in detail, as shown by the treasurer's receipt: Provided, That the county commissioners shall file a written statement with the tax assessor setting forth the boundary of each special tax school district and the boundary of the district or territory in which other special taxes are to be assessed; and the assessor shall, upon the receipt of such statement and an order from the board of county commissioners setting forth the rate of taxation to be levied on real and personal property therein, proceed to assess such property, and enter the taxes thereon in separate columns in the assessment rolls to be provided for that purpose.

Building bridge within corporate limits of town for sole benefit of municipality not a county purpose.—Skinner et al. v. Comrs. Hillsborough County, 26 Fla., 121, 7 So. Rep., 464. No general rule for determining what is county purpose.—Comrs. Duval Co., v. City of Jacksonville, 36 Fla., 196, 18 So. Rep., 339; Stockton v. Powell, 29 Fla., 1, 10 So. Rep., 688; State ex rel. Garrison v. Commissioners Putnam Co., 23 Fla., 632, 3 So. Rep., 164. Armory for militia not a county purpose.—State ex rel. Milton v. County Comrs. Jackson Co., 44 Fla., 623, 33 So. Rep. 514.

Ch. 4322, Acts 1895, Sec. 38.

533. Affidavit to roll. — When the assessor shall have completed his assessment, and made copies thereof, he shall attach to each an affidavit, to be taken before some person authorized by law to administer oaths, which shall be in the following form:

State of Florida, County of.....:

Personally appeared before me,....., assessor of taxes for....., who being duly sworn, says that the above assessment roll contains a true statement and description of all persons and property in the above county of....., subject to taxation, or liable to be assessed therein, and that the valuations thereof, so far as they were made by him, are just and correct so far as he has been able to ascertain.

Sworn to and subscribed before me, this the.....day of.....A. D. 190...

534. Duty of clerk of circuit court.—As soon as the assessment roll shall have been delivered to the collector the clerk of the circuit court shall make out and publish a statement showing the amount of taxes charged to the collector to be collected for the current year and the apportionment of the same in separate columns to the several funds for which such taxes have been levied, including all poll taxes, which poll taxes shall be itemized separately in all statements, both as to amounts assessed and as to the amounts collected; and at each monthly meeting of the county commissioners thereafter, and until the tax books are closed, he shall publish a statement giving each fund credit with the amount collected thereon as shown by the reports of the tax collector in his office, and when the tax books are closed he shall publish a like statement showing the amounts specifically allowed the collector on account of errors and insolvencies, and the amount of each fund uncollected. The aforesaid statements shall be posted by the clerk at the court house door, and published in a newspaper when one is published in the county, and the costs of publishing the same shall be paid by the county commissioners. Ib., Sec. 34.

535. Warrant to collector.—To the assessment roll delivered to the tax collector, a warrant under the hand of the assessor shall be annexed in the following form, to-wit: Ch. 4885, Acts 1901, Sec. 3.

State of Florida, to....., tax collector of the county of.....:

You are hereby commanded to collect out of the real estate and personal property, and from each of the persons and corporations named in the annexed roll, the taxes set down in each roll opposite each name, corporation or parcel of land therein described, and in case the taxes so imposed are not paid at the time prescribed by law, you are to collect the same by levy and sale of the goods and chattels, lands and tenements so assessed or of the person or corporation so taxed; and all sums collected for State taxes you are to pay to the State Treasurer at such time as may be required by law, and at the same time you are to pay to the county treasurer all sums collected for county taxes, district school taxes and other special taxes; and you are further required to make all collections on or before the first Monday in April; and on or before the first Monday in July you will make a final report to and settlement with the Comptroller and county commissioners.

Given under my hand and seal, this, the.....day of....., in the year A. D. 190..

.....,

Assessor of.....County.

Ch. 4322, Acts 1895, Sec. 36.

536. Duplicate warrants.—If for any cause such warrant and assessment roll shall not be delivered to the tax collector on or before the first Monday in November of any year, or the tax collector shall fail or omit to obey the command thereof as therein required, it shall be the duty of the county commissioners to issue another warrant, in the same form as above provided, and the tax collectors are required to make all collections on or before the first Monday in April; and on or before the first Monday in July they are required to make a final report to and settlement with the Comptroller and county commissioners: Provided, however, That all warrants now outstanding shall be of full force and effect until all the taxes remaining unpaid shall have been collected and final report and settlement made by the tax collector with the State and county authorities, and all warrants heretofore issued or to be issued shall be of full force and effect in the hands of any successor, immediate or remote, of the collector to whom it may have been or may be issued.

Collector cannot enforce payment of taxes unless warrant is attached to assessment roll, and sale without such warrant void.—Donald v. McKinnon, 16 Fla., 746.

Ib., Sec. 37.

537. Forms.—The assessors and collectors in the execution of their duties shall use the forms and pursue the instructions which may from time to time be transmitted to them by the Comptroller.

Ch. 4515, Acts 1897, Sec. 5, amending Sec. 38, Ch. 4322.

538. Collector may correct error of assessor.—If any collector has reason to believe or is informed that any person or agent of any firm, company or corporation, has given to the county assessor, or to the assistant assessors, an erroneous statement of his, or their, or its personal property, or that the assessor has not returned the full amount of all property, either personal or real, to be listed in his county or any assessment district thereof, or has omitted or made an erroneous return of any property which is by law subject to taxation, he shall at once notify the assessor of the facts in the case; and if such information as to personal property is given the assessor before the first Monday in April of any year, he shall proceed at once to make an additional assessment in triplicate, and after attaching the affidavit required in this chapter to be annexed to the assessment roll, in the same manner as is provided for the disposition of the regular assessment roll; and all personal property about which the assessor shall be notified after the first Monday in April and all real estate about which he shall be so notified, or which shall be omitted from the assessment roll, shall be assessed on the regular assessment roll then in course of preparation.

539. Collector shall not discount warrants, etc.—No collector of any county shall either directly or indirectly purchase or receive in exchange any Comptroller's warrant, county orders, jurors' certificates or school district orders, for a less amount than expressed on the face of such orders or demand. Ib., Sec. 40.

540. Receipts, returns and certificates.—The Comptroller shall furnish the collectors with a receipt book with stubs, which shall be in such form as the Comptroller shall prescribe. The collector shall, on the payment to him of any taxes, fill out the receipt as prescribed by the Comptroller, entering the amount of such taxes paid on the stub to be retained by him, and deliver the receipt to the tax payer, and shall note on his tax roll the payment thereof: Provided, That the tax collector shall be and is hereby prohibited from accepting taxes on any property not assessed on the regular assessment rolls or additional assessment rolls made under Section 538, and the tax collector is also prohibited from accepting the payment of taxes on property that has already been paid on, whether such payment was made by the owner or not, but any person may in such cases demand and receive a certificate from a tax collector that the taxes have been regularly paid, and such certificate shall set forth the date of payment, amount paid, number of receipt and description of property, which said certificate shall have the same force and effect as the original tax receipt upon which it is based. Ch. 4515, Acts 1897, Sec. 6, amending Sec. 41, Ch. 4322.

541. Taxes when due, when sale for.—All taxes shall be due and payable on or after the first Monday of November, of each and every year, and the collector is hereby vested with the power and it shall be his duty to collect by levy and sale of the goods and chattels, lands and tenements assessed, all taxes that remain unpaid on the first Monday in April. Ch. 4515, Acts 1897, Sec. 7, amending Sec. 42, Ch. 4322.

Sale for non-payment of taxes unauthorized except upon valid assessment.—McKeown v. Collins, 38 Fla., 276, 21 So. Rep., 103; Sloan v. Sloan, 25 Fla., 53, 5 So. Rep., 603; Townsend v. Edwards, 25 Fla., 582, 6 So. Rep., 212. Cannot be collected without assessment.—Bloxham, Comptr., et al., v. F. C. & P. R. R. Co., 35 Fla., 625, 17 So. Rep., 902.

542. Collector may appoint deputies to levy on personalty.—Tax collectors may appoint a deputy or several deputies to levy upon and seize personal property for unpaid taxes, and a written appointment from the collector with a statement from him of the persons against whom or the persons in whose name the property is assessed and the amount of taxes due, shall be sufficient warrant and authority for such deputy to act, and it shall not be necessary for the deputy to take the tax roll or warrant annexed thereto with him: Ib., Sec. 7.

Provided, That deputy collectors so appointed shall be liable to the same penalties prescribed by law as to tax collectors for violation or neglect of duty or otherwise: Provided, The deputy tax collector shall be entitled to the following fees which shall be collected from the delinquent tax payers at the time of the payment of their taxes: On amounts of less than five dollars taxes, his fee shall be fifty cents; on amounts of over five dollars and less than ten dollars taxes, his fee shall be seventy-five cents; and on all amounts over ten dollars taxes, he shall receive a fee of one dollar.

Ch. 4322, Acts 1895, Sec. 43.

543. Sale of personal property.—When personal property shall be levied upon for any taxes, the collector or his deputy shall give public notice of the time and place of sale of the property to be sold at least fifteen days previous to the sale, by advertisement to be posted up in at least three public places in the county, one of which shall be at the court house door, one in the election district in which the owner resides, if in the county, and one at the voting place of the district where the property is located, and where such sale shall be made at public auction, and the property sold shall be present if practicable; but at any time previous to the sale the owner or claimant of such property may release the same by the payment of the taxes and the charges for which the same was liable to be sold. In case any levy shall be made as aforesaid the collector shall be entitled to the same fees and charges as are allowed sheriffs upon execution.

Ib., Sec. 44.

544. Surplus returned.—If the property levied upon shall be sold for more than the amount of taxes, cost and collection fees, the surplus shall be returned to the person in whose possession the said property was when the levy was made, or to the owner of the property.

Ib., Sec. 45.

545. Levy or attachment in case of removal of personal property.—In case any personal property upon which taxes shall have been assessed, is removed from the county in which such property was assessed, it shall be lawful for the collector of the county by his warrant to authorize the sheriff of the county where such person shall reside, who owned the property at the time of the assessment, to levy and collect the tax so assessed in any county within this State to which such person shall have removed or in which he shall reside, and such sheriff may proceed thereon as upon execution from the circuit court.

Ib., Sec. 45.

546. Lien of assessment.—Any assessment of taxes shall be a lien upon the property assessed from date of the assessment.

Under the statute of 1874 the lien for taxes assessed related to the first day of March.—Spratt v. Price, 18 Fla., 290. Under act of 1879, chapter

3099, a tax becomes a lien only after a proper and valid assessment.—L'Engle v. F. C. & W. R. R. Co., 21 Fla., 353.

547. Collector may attach assessed personal property being removed.—The tax collectors of the several counties shall have power to attach, for taxes thereon, any personal property which has been assessed at any time before payment, if he has reason to believe that such property is being or has been removed or disposed of so as to prevent or endanger the payment of taxes thereon, in the same manner and under the same rules of law governing attachments for debts, dues or demands in other cases; and all taxes assessed upon either real or personal property, from the date of such assessment, shall have all the force and effect of a judgment and execution at law against the owner of such property. Ib., Sec. 45.

548. Double assessment.—When any collector discovers that any land has been assessed more than once, the same year, he shall collect only the tax justly due thereon, and shall make return of the balance as a double assessment and shall be credited therefor by the county commissioners and Comptroller, and he shall notify the different parties to whom the property is assessed. He shall also report to the county commissioners the errors, double assessments and insolvencies for which he is to be credited under different heads, giving in every case the names of the parties on whose account the credit is to be allowed. Ib., Sec. 46.

549. Assessment of railroads.—The president and secretary, or superintendent or manager of any railroad company or street railroad, or receiver of any railroad, whose track or road bed or any part thereof is in this State, shall annually on or before the first Monday in March, return to the Comptroller of the State under their oath, the total length of such railroad, the total length and value of such main track, branch, switch and spur track and side track, lots or parts of lots not leased or rented, and terminal facilities in this State, and the total length and value thereof in each county, city or incorporated town in this State, as of the first day of January; they shall also make return of the number and value of all the locomotives, engines, passenger, freight, platform, construction and other cars and appurtenances; and should any railroad company or any of its officers, fail to make the returns required by this act on or before the first Monday of March, or should the Comptroller have reason to believe that any return so made does not give complete and correct value of such railroad and property, the Comptroller, with the assistance and advice of the Attorney-General and Treasurer of the State, shall have power to assess the same from the best information they can obtain, specifying the value thereof in each county. And the value Ch. 4515, Acts 1897, Sec. 8, amending Sec. 47, Ch. 4322, Acts 1895.

of the locomotives, engines, passenger, freight, platform, construction and other cars and appurtenances, shall be apportioned by the Comptroller, pro rata, to each mile of main track, branch, switch, spur track and side track; and the Comptroller shall notify the assessor of each county through which such railroad runs, of the number of miles of track, and the value thereof, and the proportionate value of personal property taxable in their respective counties, and he shall notify each incorporated city and town into which said railroad runs, of the mileage apportionment of rolling stock and other property of said railroad within such town or city, and the value thereof shall be assessed by such city or town as provided by law, and upon the value thus ascertained and apportioned taxes shall be assessed the same as upon the property of individuals.

Ib., Sec. 8.

550. Assessment of telegraph lines.—Every telegraph line in this State, and its properties, rights, franchises, of every kind in this State, shall be returned and assessed in the same manner as is provided by this chapter for the assessment of railroads; and in case of failure to pay the taxes assessed, the entire line of telegraphs in this State and all of its properties, rights and franchises, or any property belonging to the same company, person or persons, may be sold in the same manner as is provided for the sale of a railroad or any of its properties upon which any tax shall be due and not paid.

Ch. 4665, Acts 1899, Sec. 1.

551. Comptroller to make return of side tracks and spurs. It shall be the duty of the Comptroller of this State on or before the first Monday in April of each year to forward to the tax assessor of each county in this State a full description of all side tracks and spurs returned for taxation by the different railroad companies in the respective counties; and it shall be the duty of the respective tax assessors to examine the report of the Comptroller of the State so sent to him, and if there be any railroad spurs or side tracks in his county which are not embraced in the returns made to the Comptroller of the State, then the said tax assessor shall proceed to assess the same to the rightful owner, if known, or if not known, as "unknown," and enter the said assessment on his assessment book as personal property.

Ib., Sec. 2.

552. Tax collectors to collect tax on railroad spurs and side tracks.—The tax collectors of the various counties in this State shall collect the taxes so assessed on railroad spurs and side tracks by the county tax assessor as other personal tax is collected: Provided, however, No assessment shall be made by the county tax assessor, or tax collected by the

county tax collectors, on railroad side tracks or spurs which have been assessed and taxes collected on by the Comptroller.

553. Sleeping and parlor car companies. — All sleeping and parlor car companies operating their cars in this State shall annually on or before the first day of January, report under oath of the secretary or other officer of such company, the total amounts of their gross receipts derived from business done between points in this State, and at the same time shall pay into the State treasury the sum of one dollar and fifty cents upon each one hundred dollars of such gross receipts; and if any such company shall fail to make such report and to pay the tax thereon as herein provided, the Comptroller shall estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent. to the amount of such taxes as a penalty for the failure of such company to make report, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected.

Ch. 4515, Acts 1897, Sec. 8.

554. Tax collector to send certificate of amount of unpaid taxes to Comptroller.—If the taxes on any railroad or any part thereof in this State shall not be paid on or before the first Monday in April of any year, the tax collector of any county wherein such taxes may be due shall send a certificate of the amount thereof to the Comptroller, including in said certificate the amount of State and county taxes, and special tax school district taxes and other special taxes.

Ch. 4885, Acts 1901, Sec. 4, amending Sec. 48, Ch. 4322, Acts 1895, as amended by Sec. 9, Ch. 4515 and further amended by Sec. 4.

555. Comptroller to issue warrant to sheriff. — The Comptroller shall have the power, upon the receipt of the certificate or certificates from the collectors as aforesaid, to issue a warrant directed to the sheriff of any county where such defaulting railroad or any part thereof may be located, commanding him to collect by levy and sale, in the same manner as is now provided by law for the sale of property under execution from the circuit court, of the shops, fixtures, rolling stock or any part thereof or of the entire road, or such part thereof as may be located in this State, the full amount of taxes due thereon, including the costs and expenses of sale; and the proceeds of such sale, after deducting the fees and costs as provided by law, shall be forwarded by said sheriff to the Comptroller, who shall pay the State taxes into the State treasury and the county taxes and district school taxes and other special taxes to the county treasurer of each county in which any such taxes were assessed according to the assessment, and the surplus after such payments

Ib., Sec. 4.

are made, if any, shall be paid over to the authorities of such defaulting railroad.

Ib., Sec. 4.

556. Sale by sheriff, fees, etc.—The fees of the sheriff in the execution of the warrant provided for in the foregoing section shall be the same as provided for by law in the case of executions from the circuit court, which fees, together with the costs, shall be included with the taxes in the amount to be collected from the defaulting railroad: Provided, further, That whenever any person or persons shall become the purchaser of any car, engine or other rolling stock of any such company or corporation at any such sale, such purchaser shall have the right to require of any such company or corporation the transportation of any such car, engine or other rolling stock to any point along its line of road at a cost not to exceed 8 cents per mile, and that the sheriff shall take corporal possession of the property levied upon under the preceding section, and on selling the same or any part thereof shall deliver it into the actual possession of the purchaser upon his paying the amount bid therefor at such sale; and in case no person shall bid the amount of taxes due, including the costs and expenses of such sale, the property shall be bid off for the Comptroller of the State, and shall be delivered to the Comptroller, and the Governor and Comptroller shall dispose of, sell and convey the same in such manner as in their judgment may be to the interest of the State. The provisions of this section, in so far as they relate to the sale of railroads for unpaid taxes, shall apply to all taxes assessed heretofore, or that may be hereafter assessed.

Ch. 4322, Acts 1895, Sec. 49.

557. Lands owned by railroad companies.—The president, secretary, superintendent, manager or agent of any railroad company, or receiver of any railroad, owning land or any other real estate in any county in this State, shall make out and deliver to the assessor, on or before the first Monday in March of each year, of each county where the property is situated a full and complete list of all lands or lots owned or held by them the same as the property of individuals; and should any railroad company fail to return their real property as required by this chapter, the assessor shall ascertain and assess the same as in cases of individual property.

Ib., Sec. 50, as amended by Ch. 4515, Acts 1897, Sec. 10.

558. Advertising and selling real estate for unpaid taxes. If the taxes upon real estate shall not be paid before the first day of April of any year, the collector shall advertise and sell in the manner following: He shall make out a statement of all such real estate, specifying the amount due

on each parcel, together with the costs of advertising and expense of sale, in the same order in which the land was assessed, and such lists shall be published once each week for five consecutive weeks in some newspaper published in the county, if there be a newspaper, said newspaper to be selected by the board of county commissioners; and if there be no such newspaper published in the county, then by posting in three public places in the county, one of which shall be at the court house; and the newspaper publisher's charges for advertising shall be fifteen cents per line for the five insertions, per single column, and the collector shall receive the same for posting at three public places, but in neither case shall there be any charge for the head notice; the Comptroller is authorized to audit said publisher's charges and draw his warrant for the same out of any moneys in the treasury not otherwise appropriated. The editor, publisher and owner shall have attached to his account an affidavit that he has not directly or indirectly paid or promised to pay any collector or any other person, any consideration whatever, or any compensation of any description, for having said tax notice published in his paper. A copy of the advertisement shall be recorded in the county clerk's office within ten days after said sale. When lands are advertised for taxes under the provisions of this act, the collector shall be entitled to fifteen cents for each certificate of sale, and shall be entitled to five per cent. commissions on the amount of each delinquent tax when actual sale is made. All such sales shall commence on the regular sale day prescribed by law, and may be continued from day to day.

Failure to advertise vital defect in proceedings.—Daniels v. Taylor, et al., 33 Fla., 636, 15 So. Rep. 313.

559. Form of notice.—Notice is hereby given that the following described lands will be sold at public auction on the .....day of ..... at ..... in the county of ....., or so much thereof as will be necessary to pay the amount due for taxes herein set opposite to the same, together with the cost of such sale and advertising:

Owner.	Description of Land.	Section.	Township.	Range.	Acres.	Amount of Taxes and Costs.

Ib., Sec. 10.

(To be signed)

.....,

Tax Collector ..... County.

Ib., Sec. 10.

560. Duty of proprietor of newspaper containing notice. The publisher, proprietor or foreman of any newspaper publishing any such notice shall forward a copy of each number of his paper containing such notice to the tax collector and the clerk of the circuit court and Comptroller by mail, and when the publication of the tax sale notice is completed as provided by law, the publisher shall make affidavit thereto in the form prescribed by the Comptroller and annexed to the tax collector's report of the tax sale or list of lands sold as provided by Section 565.

The expense of advertising delinquent tax list is not a charge against the county, nor is it payable by the State except as to the cost of advertising attaching to lands bought in by the State.—Payne v. Washington County, 25 Fla., 798, 6 So. Rep., 881.

Ch. 4332, Acts 1895, Sec. 51.

561. Sale of land.—On the day designated in the notice of sale, at 12 o'clock noon, the tax collector shall commence the sale of those lands on which taxes have not been paid as aforesaid, and shall continue the same from day to day until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, cost and charges thereon; and in case there are no bidders the whole tract shall be bid off by the collector for the State; but the collector must offer all of said land as assessed.

Ib., Sec. 51.

562. Collector not to sell land upon which taxes have been paid. Penalty.—Should any collector sell any lands upon which the taxes have been paid, he shall be liable to the owner of said land for twice the amount of the tax, and in addition to pay all legitimate expenses the owner may be put to in clearing his titles, and refund to the State all amounts for which he may be credited on account of such illegal sale, including cost of advertisement.

Ib., Sec. 52.

563. Where taken from when part only sold.—The land shall be struck off to the person who will pay the tax, cost and charges for the least number of acres of land, and the portion thereof sold shall be taken from the southeast corner of such parcel, and described in a square form or as near as may be.

Ib., Sec. 53.

564. Immediate payment required.—The tax collector shall require immediate payment by any person to whom any parcel of such land may be struck off, and in all cases where payment is not made within twenty-four hours he may declare the bid cancelled and sell the land again on the following day; and any person so neglecting or refusing to pay any bid made by him shall not be entitled, after such neglect, to have any bid made by him received by the collector during such sale.

565. Triplicate lists of lands sold to be made and filed. Ib., Sec. 55. Immediately after any tax sale the tax collector shall make out a list in triplicate of all the lands sold for taxes, showing the date of the sales, the number of each certificate, the name of the owner as returned, a description of the land sold, the name of the purchaser, and the amount for which sale was made, and the collector shall append to each of said lists a certificate setting forth the fact that such sale was made in accordance with law. One of such lists shall be forwarded to the Comptroller, and one shall be retained by the collector, and the third list filed in the office of the clerk of the circuit court, who shall enter the same in a book to be provided by the county commissioners for that purpose, and he shall be entitled to receive the same fees for such record as are paid for other recording, every five figures to be counted as one word; one-half of such fees to be paid by the State and one-half by the county, which book shall be in the following form, viz:

Land sold for taxes in the county of ....., on the ..... day of ..... A. D., 190...

No. of Certificate.	Description of Land.	Returned for Assessment by	Names of Purchasers.	Amount of Sales.
1	N. ½ S.W. ¼ Sec. 3; T. 4 S., R. 3 W., 200 Acres, Lot 6, Block 4.		Geo. Brown.	$16000
2			J. Black.	$900

When Redeemed	By Whom Redeemed.	Amount Paid.	To Whom Deeded.	Date of Deed.
October 1, 1893.	W. Gray.	$24 00	J. Black.	190...

566. Procedure in incorporated towns and cities.—Procedure in incorporated towns and cities shall, unless otherwise provided in this chapter, be substantially in the same manner as in the collection of taxes, and sale of lands and personal property for non-payment of taxes and licenses, as for State taxes; and for taxes due by any railroad or any telegraph company, the tax collector of such city or town may levy upon and sell any property within the corporate limits of said city or town belonging to such company, other than railroad track and telegraph line. Nothing herein shall be construed as in any way abridging or limiting powers to assess, levy or collect taxes, licenses or assessments which have been or may be granted to any municipal cor- Ib., Sec. 56, Revised.

poration by special act or charter act, or as limiting such municipal corporations in the method of assessing, levying or collecting the same to the methods established by this chapter.

State acquires no title by municipal sale.—Stieff v. Hartwell, 35 Fla., 606, 17 So. Rep., 899.

567. Tax sale certificate.—At the sale of any land for taxes, the tax collector making such sale shall give to the purchaser a certificate thereof in substantially the form following:

Ch. 4888, Acts 1901, Sec. 1.

State of Florida, }
..... County. }

Tax Sale Certificate No. ....., issued ..... day of.....A. D. 190... Transferable by endorsement.

I, ..., tax collector of ..... county, Florida, do hereby certify that at a sale of lands for taxes, made pursuant to law, on the date above mentioned, I did sell to.....the land described for the sum of ..... dollars and ..... cents, said sum being the amount due for unpaid taxes, cost and charges, for the year A. D. 19..., said land having been assessed as the property of ....., situated in the county and State aforesaid, and described as ..... containing ..... acres, more or less. The owner or any person entitled to redeem said lands may at any time before the issuing of a tax deed hereunder, redeem the same from this certificate by paying the clerk of the circuit court of the county aforesaid the amount, cost and charges prescribed by law. At any time after two years from the issue of this certificate, any holder thereof upon application to the clerk of the circuit court of said county, after notice as required by law and the surrender of this certificate, and the payment to the clerk of the proper amount for the redemption of all other certificates then outstanding against said land, shall be entitled to a tax deed to said land if not then redeemed by some person entitled to redeem the same.

Witness my official signature the date aforesaid.

.....,
Tax Collector ..... County, Florida.

568. Tax sale certificate transferable by endorsement.—All tax certificates heretofore or hereafter issued, whether to the State or individuals, shall be transferable by endorsement at any time before they are redeemed, or a tax deed is executed therefor.

Ib., Sec. 2.

Assignment of certificate should be stated in the deed. Revenue Act 1883, where the State is not the purchaser.—Saunders et al. v. Ransom, 37 Fla., 457, 20 So. Rep., 530; Ropes v. Kempe, 38 Fla., 233, 20 So. Rep., 992.

569. Tax sale certificates belonging to State held by clerk.—All tax sale certificates now owned by or hereafter issued to the State, shall be held by the clerks of the circuit courts of the several counties wherein are situated the lands covered by such certificates for redemption or sale, as hereinafter provided, and all redemptions of lands heretofore or hereafter certified, or sold for taxes, whether certified or sold to the State, or sold to individuals, shall be made through the clerks of the circuit courts of the respective counties wherein such lands are situated. Ib., Sec. 3.

570. Lands sold may be redeemed.—Any person, or agent of such person, owning or claiming such lands sold for taxes, or any part or parcel thereof, or any interest therein, or the creditor of any such owner or claimant, may redeem the same at any time after such sale and before a tax deed is issued therefor, by paying to the clerk of the circuit court of the county wherein such land is situated the face of the certificate of sale, or such proportion thereof as the part or interest redeemed shall bear to the whole, and interest thereon at the rate of twenty-five per cent. per annum for the first year, and eight per cent. per annum for the time after the first year from the date of sale, together with the fee of fifty cents for the clerk for each certificate or part of certificate so redeeemed. Ib., Sec. 5.

When any land shall have been so redeemed, the clerk shall refund to the holder of the tax certificate the whole amount received by him for redemption, less his fee of fifty cents, and such certificate shall be surrendered to the clerk and cancelled, if the whole be redeemed, or if only a portion thereof shall be redeeemed, such portion and description of land, with date of redemption, shall be endorsed on such certificate by the clerk, and the certificate retained by the owner subject to such endorsement, and such redemption shall be forthwith entered by the clerk on the record of tax sales on file in his office.

571. Redemption receipt and certificate.—Whenever any land covered by certificates in the hands of individuals shall be redeemed as provided for in the foregoing section, the clerk shall give to the person making such redemption a receipt and certificate showing the amount paid for such redemption, a description of the land redeemed, and the date, number and amount of the certificate, certificates, or part of certificate, from which the same is redeemed, which shall be substantially in the form following: Ib., Sec. 6.

572. Form of redemption receipt:

Ib., Sec. 6.

Received of ....., ... dollars, which is accepted (in full or in part), the amount now due upon certificate No. ....., for $....., dated ..... day of ..... A. D. 19..., for the redemption of the following land in ..... county, Florida, described as ..... containing ..... acres, more or less, which was assessed and sold as the property of ..... for taxes of the year A. D. 19...; and said described land is hereby redeemed from the said taxes and certificates.

Witness my official signature and seal this, the ..... day of ..... A. D. 19....

.....,

Clerk Circuit Court ..... County, Florida.

573. Tax sale certificate held by State may be sold by clerk.—Any person may purchase any certificate of land sold or certified to the State for taxes from the clerk of the circuit court of the county wherein such land is situated by paying to such clerk the amount of such certificate and interest thereon from the date of the certificate at the rate of twenty-five per cent. per annum for the first two years, and eight per cent. per annum for the time after the first two years, and the fee of fifty cents for the clerk; and the endorsement of such certificate by such clerk officially, with the date and amount received, shall be sufficient evidence of the transfer and assignment thereof. Any portion of land or interest therein contained in a tax certificate held by the State, which can be ascertained by legal and usual sub-division, can be redeemed or sold by a certificate of such transfer, or redemption, under the hand and official seal of the clerk of the circuit court, and a deed may issue thereupon in compliance with the terms of this chapter.

Ch. 5112, Acts 1903, Sec. 1, amending Sec. 7, Ch. 4888, Acts 1901.

Endorsement of the clerk shall be made upon the tax certificate of the portion of the certificate redeemed or sold, giving the description of the land and the date of the transfer, with the amount received therefor. Should it appear that the land covered by the oldest certificate to be transferred or cancelled has not been assessed, or is assessed to the State, for any subsequent year, the party purchasing or redeeming the oldest certificate shall pay to the clerk the taxes due for each of such subsequent omitted years, (and all taxes that become due the following November), based upon the last assessed valuation, with interest thereon, at the rate of twenty-five per cent. per annum for the first two years, and eight per cent. per annum for the time after the first two years, beginning on the first day of April of the year next after the year for which such taxes are due.

574. Notice of application for tax deed. — No tax deed for lands sold for taxes shall issue until the clerk of the circuit court shall have given at least thirty days' previous notice of the application for a deed by publishing the same once a week in some newspaper in the county, or if no newspaper be published in the county then by posting such notice at least thirty days at the court house door, and at two or more public places in such county, and all fees and expenses of notice shall be paid in advance by applicant for deed. Such notice shall be substantially in the form following: Ch. 4888, Acts 1901, Sec. 8.

575. Form of notice:

Notice is hereby given that ..... purchaser of tax certificate No. ....., dated the ..... day of ....., A. D. ....., has filed said certificate in my office and has made application for tax deed to issue in accordance with law. Said certificate embraces the following described property situated in ..... county, Florida, to-wit: ..... The said land being assessed at the date of the issuance of such certificate in the name of ..... Unless said certificate shall be redeemed according to law, tax deed will issue thereon on the .....day of ..... A. D. .... Ibid.

.....,

Clerk of Circuit Court ..... County, Florida.

The clerk shall also mail a copy of said notice of application for tax deed to the owner of the lands for which a tax deed is applied for. If the owner is unknown, then such notice shall be delivered or mailed to the person last paying taxes on said property.

576. Proof of publication filed with clerk.—Proof of the publication or posting of such notice as is required by the preceding section and the cost thereof, shall be filed by the clerk before any tax deed shall be issued, and at any time before the execution of such tax deed any person owning or claiming the land therein or any part or parcel thereof or any interest therein, or any creditor of such owner or claimant, may redeem the same by paying to the clerk the full amount that may then be due the applicant for all certificates, fees and cost of publication, or such portion thereof as the part or interest redeemed shall bear to the whole, together with eight per cent. thereon. Ib., Sec. 9.

577. Manner of obtaining tax deed.—The holder of any tax certificate at any time two years after the date of its issue, may obtain a tax deed to the land therein described by application to the clerk of the circuit court of the county Ch. 4888, Sec. 10, Acts 1901, as amended by Ch. 5152, Sec 1, Acts 1903.

wherein such land is situated as provided by law, and the surrender of such certificate and the payment to the clerk of the proper amount for the redemption or surrender of all other outstanding certificates covering said lands, and the payment to the clerk a fee of fifty cents for each certificate then redeemed, and for searches ascertaining all outstanding certificates, a fee of fifty cents for the oldest tax sale and a fee of fifteen cents for each subsequent tax sale at which said land was sold, or subsequent omitted tax year, and a fee of one dollar for the issue of the deed and ten cents for each additional description of land embraced in any one deed; which deed shall be prima facie evidence of the regularity of the proceedings from the valuation of the land by the assessor to the deed inclusive. All tax deeds shall be issued by the clerk of the circuit court of the county wherein the lands conveyed are situated, and shall be in substantially the form following, to-wit:

State of Florida, }
County ..... }

Know all Men By These Presents:

That whereas, ..., has this day applied for a tax deed to the land hereinafter described and has produced and surrendered to the undersigned, clerk of the circuit court for the county aforesaid, Tax Certificate No... from which it appears that said land was sold by the tax collector of said county on the ..... day of ..... A. D., 19..., for unpaid taxes for the year A. D., 19.., as the property of.....; and whereas, said applicant has redeemed (or purchased and surrendered) all other outstanding tax certificates covering said land, and proper notice having been given as required by law of his application for the issue of this deed, and no owner, claimant or other person entitled to redeem said land has appeared to redeem the same:

Now, therefore, the State of Florida, in consideration of the premises and the sum of ..... dollars, the amount paid upon the certificate, and for costs and charges, and in pursuance of the statute in such cases provided, has given, granted, bargained and sold, and does hereby give, grant, bargain, sell and convey unto the said ..... and his heirs and assigns forever, and to his and their own proper use, benefit and behoof, the following land situated and being in the county and State aforesaid, and described as ....., containing ..... acres, more or less: Provided, however, That said land shall continue subject and liable for any unpaid taxes thereon.

In testimony whereof, by virtue of the authority in me vested by law, and for and on behalf of the State of Florida,

I, the undersigned, as clerk of the circuit court for the county and State aforesaid, have executed this deed and have hereunto set my official signature and seal at..... in the county of....., State of Florida, on this ..... day of ..... A. D. 19.....

..... (Seal.)

Clerk of Circuit Court,.....County, Florida.

Signed, sealed and delivered in presence of

.....

.....

Tax deed of land sold under act of 1872, for taxes assessed in 1871, under act of 1869, is prima facie evidence of lawful assessment and warrant.—Mundee v. Freeman, 23 Fla., 529, 2 So. Rep., 882. Tax deed prima facie evidence of regularity of proceedings from valuation of land to date of deed, inclusive.—Sams v. King, 18 Fla., 558. Under the act of 1874 tax deed is prima facie evidence of title and regularity of proceedings from valuation of land to date of deed inclusive.—Paul v. Fries, 18 Fla., 574. Tax deed which is prima facie evidence of regularity of proceedings is cloud on title though assessment be void.—Sloan v. Sloan, 25 Fla., 54, 2 So. Rep., 882. Deed on sale of land for taxes which had been paid by the owner is void.—Conant v. Buesing, 23 Fla., 559, 2 So. Rep., 882. Tax deed must follow description of assessment roll, and if it departs therefrom, it is void.—Carncross v. Lykes, 22 Fla., 587; Grissom v. Furman, Ib., 581. A tax deed purporting on its face to have been executed within five days after the sale by the collector, held void.—Neal v. Spooner, 20 Fla., 38. Purchase at tax sale by owner, or another person at request of owner, and deed thereon, confers no new title on purchaser and is only a payment of the tax.—Petty v. Mays, 19 Fla., 652. Where there are several tax deeds to the same party, if the first deed is good to vest title in him, those subsequent pass no title and are merely evidence of payment of taxes by him.—Paul v. Fries, 18 Fla., 573. Purchase of land at tax sale by mortgagee out of possession, held good against a third person claiming under prior tax sale.—Spratt v. Price, 18 Fla., 290. Where tax sale certificates issued to one person and the tax deed is made to another, there must be some evidence that certificate was assigned by original purchaser.—Florida Savings Bank v. Brittain, 20 Fla., 507.

Deed void when.—Levy v. Ladd, et al., 35 Fla., 391, 17 So. Rep., 635. Amount of taxes assessed against each tract must be set down.—Ib. Where description in deed varies from description in assessment deed is void.—Ib.; McKeown v. Collins, 38 Fla., 276, 21 So. Rep., 103. Where sale is for entire tax part legal and part illegal the illegal part vitiates deed.—Graham et al. v. Florida L. & M. Co., 33 Fla., 356, 14 So. Rep., 796. See Town of Kissimmee v. Cannon, 26 Fla., 3, 7 So. Rep., 523. Purchaser entitled to deed when.—State ex rel. Warwick v. Jordan, Clrk., 36 Fla., 1, 17 So. Rep., 742; Brown v. Castellaw, 33 Fla., 204, 14 So. Rep. 822. Rights of purchaser at tax sale.—Hull v. State ex rel. Rollins, 29 Fla., 79, 11 So. Rep., 97; Graham et al. v. Fla. L. & M. Co., 33 Fla., 356, 14 So. Rep., 796; Spaulding, Admr., v. Ellsworth et al., 39 Fla., 76, 21 So. Rep. 812. Void assessment fatal to tax deed.—Daniels v. Taylor et al., 33 Fla., 636, 15 So. Rep., 313.

(Tax deeds prima facie evidence of title: See Section 1521.)

578. Duty of clerk as to redemption of land.—In consideration of the fee of fifty cents allowed the clerk for each tax certificate redeemed or sold, and the fees for searches as provided in Section 577, and the fee of one dollar for

Ch. 4888, Sec. 11, Acts 1901, as amended by Ch. 5113, Sec. 2, Acts 1903.

every tax deed issued containing the description in one certificate and ten cents for each additional description when a deed is applied for, it shall be the duty of the clerk to or on the record of tax sales the redemption or sale of tax certificate made through him, and shall also keep substantial book to be furnished him by the county commissioners, as a permanent record of the office, a complete and full record of all sales and redemptions, giving the number of the tax certificate, the date of the tax certificate, the amount or proportionate amount of the face value of the certificate, the interest paid, the date of sale or redemption, the name of the holder or owner of the certificate, the purchaser or redeemer of the certificate, and the disposition of the proceeds, with the date thereof. It shall also be the duty of the clerk without further compensation to make within the first ten days of every month and oftener if required to the Comptroller a report in detail as above, of all sales and redemptions in his office during the previous month of the certificates belonging to the State, giving the amounts received for face of the certificates and interest separately, and shall remit the amounts with his report, and the Comptroller shall remit to the proper officers the amounts due the State and county and sub-districts respectively, and shall receive receipts for the same in due course. It shall be the duty of the Comptroller to furnish all necessary blanks and forms for the certificates, receipts, deeds, reports, etc., for the use of tax collectors and clerks, and to prescribe the form of the permanent record to be furnished by the county commissioners, as provided by this act. Any clerk of the circuit court who fails or refuses to perform any and all of the duties herein prescribed, shall be subject to suspension by the Governor for neglect of duty in office.

579. When taxes not due at time of sale, etc.—When it shall appear to the Comptroller that the taxes on any land heretofore sold, or that may hereafter be sold to the State for taxes, were not due at the time of such sale upon the lands or any part thereof embraced in any certificate of sale, or that the sale was otherwise illegal or improper, he shall have power to cause to be cancelled, in whole or in part, or cause to be surrendered such certificate in such manner and upon such terms as may in his judgment be best to protect the interest of the State and do justice to the owners, and the clerk shall make such cancellation or surrender on the order of the Comptroller.

Ch. 4888, Acts 1901, Sec. 12.

580. Illegal, void or imperfect certificates to be cancelled. The clerks of the circuit courts are hereby required to select from among the tax sale certificates now or hereafter

Ch. 5151, Acts 1903, Sec. 1.

held by the State, all such certificates as appear on their face to be illegal, void or imperfect because of erroneous descriptions or otherwise, and to transmit such imperfect or void certificates to the Comptroller, who, with the State Treasurer and Attorney-General, shall examine the same, and such of said certificates as they shall determine to be for any cause illegal, void or imperfect shall by them be cancelled and destroyed and a list of the same shall by them be certified to the clerks to be noted on their records. Proper credits of such certificates shall be made to the clerks and proper entries of cancellation shall be made on the Comptroller's records.

All certificates sent up by the clerks and not cancelled by the Comptroller, Treasurer and Attorney-General shall be returned to the clerks and charged to them for sale or redemption.

581. Procedure where land sold for taxes, the taxes having been paid, or land not subject to taxation.—Whenever it shall be proved to the clerk of the circuit court of any county in this State that lands in his county have been sold for taxes when the taxes on such lands have been already paid, or the lands were not subject to taxation at the time of the assessment on which they were sold, he shall forward a certificate of such fact to the Comptroller, and enter upon the list of land sold for taxes kept in his office, a memorandum of such fact. Ch. 4888, Acts 1901, Sec. 13.

The Comptroller, upon receipt of such certificate, if satisfied of the correctness thereof, when the certificate of sale is held by the State, shall notify the clerk, who shall cancel the same, and when the certificate is held by an individual, the Comptroller shall at once notify the original purchaser, or holder, if known to him, that upon voluntary surrender of the certificate or deed of release of his rights under any tax deed that may have been issued to him upon such certificate, within ninety days of such notification, but not afterward, he will refund to the holder of such certificate, the amount received by the State from the purchase of said certificate, and the sum of one dollar for such deed of release as may be necessary; and the county commissioners shall refund the amount received by the county on such account, and the Comptroller is hereby directed to draw his warrant on the State Treasurer for such sum or sums as he may be shown to be due on such account, to be paid out of any moneys not otherwise appropriated.

Tax deed for land upon which taxes have been paid, void.—Conant v. Buesing, 23 Fla., 559, 2 So. Rep., 882.

582. Auditor to examine accounts and tax certificates of clerk of circuit court.—The Governor shall require the State Ib., Sec. 14.

Auditor to examine into the records, accounts and tax certificates of the clerks of the circuit courts at least once in each year, and report his findings.

Ib., Sec. 15.

583. Clerk circuit court to receipt for tax certificates and receipt filed with Comptroller.—It shall be the duty of the tax collector of any county in this State to deliver to the clerk of the circuit court of the county in which any sales are made by him all certificates of sale to the State for unpaid taxes, take a receipt therefor from said clerk, and shall file such receipt of the clerk, with his report of tax sales as now required by law, with the Comptroller of the State. Such receipt from the clerk of the circuit court shall be the Comptroller's authority to charge such clerk with the amount of such certificates.

Ch. 4889, Acts 1901, Sec. 1.

584. Certain tax sale certificates surrendered.—All tax certificates covering land sold to the State of Florida after the fourth day of August, A. D. 1891, for taxes assessed for the year of 1890, and now held by the State, shall be surrendered upon the payment of the amount of taxes and costs stated in the certificate without any additional interest, expense or cost.

Ch. 4890, Acts 1901, Sec. 1.

585. Certain tax sale certificates cancelled.—All tax sale certificates or tax deeds issued to the State or county for unpaid taxes assessed on real estate for any year prior to the year 1877, which are now held by the State or any county, be and the same are cancelled and shall have no effect upon the titles of such real estate, but such titles shall stand as though such tax sales had never been made.

Ch. 5111, Acts 1903, Sec. 1.

586. Tax certificates of soldier's and sailor's home cancelled, when.—Whenever any soldier or sailor who was in the service of the State or Confederate States, during the war between the States, and was honorably discharged therefrom, shall make oath before the clerks of the circuit courts of this State, that his home has been sold for nonpayment of taxes, and that he is unable, by reason of poverty, to redeem the same, the said clerks shall cancel the certificate of such sale, and mark thereon the reason for such cancellation.

b., Sec. 2.

587. Widows of soldiers and sailors.—Widows of soldiers and sailors mentioned in the preceding section shall for the same cause have the right to redeem their homes in the same manner.

588. Proof required.—Clerks of circuit courts shall require proof of such service and inability to pay, mentioned in Section 586.

589. Clerk of circuit court to make deeds to land sold by cities or towns for taxes.—The clerk of the circuit court shall make the deed for all lands sold for the non-payment of taxes by any city or town, and not redeemed, substantially in the same form as provided in the sale of lands for county or State taxes. Ch. 4322, Acts 1895, Sec. 62.

590. Tax deeds to be issued in the name of the State or town.—All tax deeds shall be issued in the name of the State, or city or incorporated town as the case may be, shall be signed by the clerk of the circuit court, shall be witnessed by two witnesses, and the seal of the circuit court attached thereto, and shall be acknowledged or proven as other deeds. The clerk of the circuit court shall be entitled to receive one dollar for each deed issued containing the description in one certificate, and ten cents for each additional description embraced in the deed. Ib., Sec. 63.

591. Limitation of time within which suit must be brought.—When the purchaser of land at a tax sale goes into actual possession of such land, no suit for the recovery of the possession thereof shall be brought by the former owner or claimant, his heirs or assigns, or his or their legal representatives for the recovery of the possession of such land, unless such suit be commenced within four years after the purchaser at such tax sale goes into possession of the land so bought; and the purchaser at such tax sale, where said real estate is in the adverse actual possession of any person or persons, shall not be entitled to recover possession of such real estate bought at such tax sale unless suit for such recovery shall be brought within one year from the date of acquiring a right to such tax title: Provided, That infants, persons of unsound mind, or under guardianship, or imprisoned, may commence such suit or proceeding within three years after such disability shall cease. Ib., Sec. 64.

592. Party recovering land must refund taxes paid and for improvements.—When a recovery is had by any person or corporation of any land sold for taxes under this act, who has not, prior to the sale, paid the taxes thereon for which the land was sold, the person or corporation having such recovery shall pay to the party from whom recovery is had all taxes he has paid upon the said land at the time of sale, and the redemption money thereupon, together with all taxes he has paid since said sale, with eight per cent. interest thereupon; also the value of all permanent improvements made upon said land bona fide. The amount due for taxes paid, redemption money and improvements Ib., Sec. 64.

upon the land to be found upon trial or hearing when the recovery is had.

Defences of party in actual possession of land against a recorded tax deed not restricted.—L'Engle v. F. C. & W. R. R. Co., 21 Fla., 353; Florida Savings Bank v. Brittain, 20 Fla., 507.

Ib., Sec. 65.

593. Land bid off for the State.—Where land is bid off by the collector for the State, the tax certificate shall be issued by the tax collector to the State, in the name of the Treasurer, and if the land is not redeemed or the certificate not sold by the State, the title to the land shall, at the expiration of the time for redemption, vest in the State without the issuing of any deed, as provided for in other cases, and the certificate shall be evidence of the title of the State, and none of the provisions of this section providing for the issuing of a deed shall apply to such cases; and in all cases in which land or real estate has heretofore been sold and purchased by the State, and the certificate has not been sold or land or real estate not been redeemed, and the time for redemption has passed, it shall not be necessary for the State to procure a deed, but the title shall be held to be in the State, and the certificate shall be evidence of the title of the State.

Ch. 4515, Acts 1897, Sec. 11.

594. Assessor's commissions. — The assessor of taxes shall be entitled to receive upon the amount of taxes, general or special, assessed, but not on each separately, the following commissions upon the amount of taxes assessed, excluding errors, to-wit: On the first two thousand dollars, ten per cent.; on the next two thousand dollars, five per cent.; on the balance, two per cent., which shall be allowed him by the Comptroller and paid to him by the Treasurer as other Comptroller's warrants are paid; and the assessor shall receive the same rate of commissions for assessing the county tax, to be allowed by the county commissioners and paid by the county treasurer. When the tax book is received by the Comptroller from the assessor, examined and found to be correct, then the Comptroller shall issue his warrant for four-fifths of the amount of commissions due the assessor, reserving the payment of the remaining one-fifth until a report of errors and double assessments is approved by the county commissioners and a copy thereof filed with the Comptroller, and the county commissioners in their settlement with the assessor shall proceed in the same manner.

Ch. 4885, Acts 1901, Sec. 5, amending Sec. 67, Ch. 4322, Acts 1895, as amended by Sec. 12, Ch. 4515, Acts 1897.

595. Collector's commissions.—The tax collector shall be entitled to commissions upon the aggregate amount of State taxes, general or special, including licenses, collected by him and paid into the State treasury, but not on each separately, as follows: On the first two thousand dollars, ten per cent.;

on the next two thousand dollars, five per cent.; on the balance, two per cent.; and he shall be allowed the same rate of commission for collecting the county taxes.

The commissions for collecting the State taxes shall be audited and allowed by the Comptroller and paid by the Treasurer upon warrant therefor; and the commissions for collecting the county taxes shall be audited and allowed by the county commissioners; and the commissions for collecting the tax for special tax school districts shall be audited and allowed by the county board of public instruction, and shall be at the rate of two per cent. on such collections. The commissions for collecting other special taxes shall be allowed by the county commissioners at the rate of two per cent. and paid out of the special taxes so collected.

In counties where assistant assessors are appointed, they may be paid by the county if the county commissioners shall find that it is to the best interest of the county so to do.

Commissions of tax collectors are to be computed on the amount of collections made on revenue account for each year regardless of whether it is collected by one collector or successive collectors.—State ex rel. Gonzales v. Drew, 16 Fla., 303.

596. Not to impair validity of assessments heretofore made.—Nothing in this chapter shall be construed as to impair the validity of any assessment of taxes assessed prior to the first day of January, 1896, nor of any collector's warrant that has been or may be annexed to any assessment roll prior to said first day of January, 1896, nor of any proceedings had or done, or that may hereafter be had or done, by any collector for the collection of any taxes assessed before that time, nor shall this act relieve any person from any penalty incurred by reason of a violation of the law now in force. Ch. 4322, Sec. 68, Acts 1895.

CHAPTER II.

FINANCIAL MATTERS.

ARTICLE 1.—Fiscal year. Section..... 597
2.—Payment of money into treasury. Section..... 598
3.—Proceedings against delinquents. Sections.....509-613
4.—State bonds. Sections.....609-613
5.—Miscellaneous. Sections.....614-615

ARTICLE 1.

FISCAL YEAR.

597. (405.) Fiscal year.—The fiscal year shall begin on the first day of January and end on the thirty-first day of December in each and every year.

ARTICLE 2.

PAYMENT OF MONEY INTO THE TREASURY.

Ch. 1292, Acts 1861, Sec. 1.

598. (406.) Manner of paying money into the treasury.—Whenever any officer of this State or other person desiring to pay any money into the treasury of the State on account of his indebtedness to the State, he shall first go into the Comptroller's office, and there ascertain from the Comptroller's books the amount of his indebtedness to the State, and thereupon the Comptroller shall give him a memorandum or certificate of the amount of such indebtedness, and on what account. Second, he shall take said certificate with him to the Treasurer's office and deliver the same to the Treasurer, and pay over to the Treasurer the amount called for in said certificate. Third, it shall be the duty of the Treasurer to receive the money, make a proper entry thereof, file the Comptroller's certificate, and give a certificate to party paying over the money, acknowledging the receipt of the money, and on what account, which certificate thus received from the Treasurer the party shall return to the Comptroller's office, on receipt of which the Comptroller shall give the party a receipt for the amount, and enter a credit on the party's account in his books for the amount thus paid by him to the Treasurer, and file the Treasurer's certificate received.

ARTICLE 3.

PROCEEDINGS AGAINST DELINQUENTS.

March 4, 1839, Sec. 4.

599. (407.) Comptroller to report delinquents. — The Comptroller shall report to the State attorney of the proper circuit the name of any delinquent officer whose delinquency concerns the financial department of the government, so soon as such delinquency shall occur; and the State attorney shall proceed forthwith against such delinquent.

Feb. 10, 1832, Sec. 1.

600. (408.) Comptroller to certify accounts of delinquents.—When any revenue officer or other person accountable for public money shall neglect or refuse to pay into the treasury the sum or balance reported to be due to the State, upon the adjustment of his account, the Comptroller shall immediately hand over to the State attorney of the proper circuit the statement of the sum or balance,

certified under his hand and seal of office, so due; and the State attorney shall institute suit for the recovery of the same, adding to the sum or balance stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment is obtained thereon, and an interest of 8 per centum per annum from the time of the delinquent's receiving the money until it shall be paid into the State treasury.

601. (409.) Certified statements and documents. — In every case of delinquency, where suit has been or shall be instituted, the statement in the last section aforesaid, certified as aforesaid, shall be admitted as evidence and shall be prima facie proof of the facts therein stated. And all copies of bonds, contracts, or other papers relating to or connected with the settlement of any account between the State and an individual, when certified as aforesaid to be true copies of the original, may be annexed to such statement aforesaid, and shall have equal validity and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: Provided, Where suit is brought upon a bond or other sealed instrument, and the defendant shall plead non est factum, or upon motion to the court, such plea or motion being verified by the oath of the defendant, it shall be lawful for the court to take the same into consideration, and, if it shall appear necessary for the attainment of justice, to require the production of the original bond, contract, or other paper specified in such affidavit. Ib., Sec. 2.

602. (410.) Preference of State in case of insolvency.— When any revenue officer or other person now indebted or hereafter becoming indebted to the State, by bond or otherwise, shall become insolvent, or when the estate of any deceased debtor in the hands of executors or administrators shall not be sufficient to pay all the debts due from the deceased, the debt due to the State shall be first satisfied; and the priority hereby established shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor shall be attached by process of law, as to cases in which the party shall be absolutely insolvent. Ib., Sec. 5.

603. (411.) Delinquent collectors to be reported to State attorney.—It shall be the duty of the Comptroller and the judge of the county court and of the president or chairman of the board of county commissioners and the members Ch. 1977, Acts 1874, Sec. 8.

of the said board representing the same, after sufficient time has expired to receive the reports required of the tax collector by law, and they have not received them, or if the collector has failed to turn over money collected, to either the proper State or county officer or officers, as provided by law, to report the same to the State attorney of the circuit in which the collector resides; and it shall be the duty of the State attorney to institute such proper proceedings, both civil and criminal, as are authorized by this law and the law to which it is an amendment; and the said State attorney shall, in case the said defaulting tax collector shall either attempt to collect taxes or perform any other act prohibited by law, or shall fail or refuse to deliver all the official tax rolls and books, with the statement required by law, to his successor or the person appointed by the Governor to perform the duties appertaining to the office of the collector of any county in lieu of any such defaulting collector, apply in a summary way, by petition to the circuit court or to the judge thereof in vacation, of the proper county, for an order prohibiting and enjoining in the one case such defaulting collector from collecting or attempting to collect taxes, or performing any other act prohibited to him by law, and requiring him in the other case to deliver to his successor, or to the person appointed by the Governor to perform his duties as aforesaid, all the official tax rolls and books, with the statement required by law; and the said court or judge in vacation may make such order and compel the performance of, or obedience to such order by attachment and punishment as for a contempt of court.

Ib., Sec. 5.

604. (412.) Forfeiture of commissions.—For any failure on the part of any tax collector to make reports or to pay over any money as required by law, he shall forfeit for every week's delay one-fifth of his commissions, and if the delay extends beyond thirty days he shall forfeit all commissions on all amounts to which such failure applies, and all future commissions upon all collections to be made: Provided, That the Comptroller, for good cause shown him, may suspend the force and operation of this section with regard to such defaulting collector.

Ib., Sec. 4; Const. 1885, Art. 4, Sec. 15.

605. (413.) Suspension of officer. — The Governor is authorized, for a failure or refusal of any tax collector or other officer whose duty it is to perform any act connected with the assessment or collection of taxes, to perform any duty or act, to make any return or pay over any money required by law, by his written order to suspend any such defaulting or non-complying collector or other officer from office, and from further acting in his office until his further

order, but not beyond the adjournment of the next session of the Senate; and to appoint or designate some other person to perform and discharge all the duties of such collector or other officer, who shall discharge such duties until the further order of the Governor, but not beyond the adjournment of the next session of the Senate, and to whom the official tax rolls, books and statements as required by law shall be delivered.

606. (417.) Comptroller to report to clerk certain defaulting officers.—The Comptroller shall, within ninety days after the expiration of the term of office of any tax collector, sheriff, clerk of the circuit or criminal court, treasurer or any other officer of any county, who has the collection, custody and control of any State funds, who shall be in arrears in his accounts with the State, make up and forward to the clerk of the circuit court of such county a statement of his accounts with the State. Ch. 3854, Acts 1889, Sec. 1.

607. (418.) Duty of clerk.—The clerk of the circuit court to whom any such statement shall be forwarded, shall file the same in his office, and within ten days thereafter shall furnish each of the sureties of such delinquent officer with an abstract of such statement, showing the amount of indebtedness of such delinquent officer to the State, and shall at the same time furnish the sureties with a statement showing his indebtedness to the county, if there be any. Ib., Sec. 2.

608. (419.) Conviction or forfeiture no defence to bond. No conviction or forfeiture shall be pleaded in bar to or avoidance of any bond which may have been given by any officer for the faithful performance of the duties of his office. March 4, 1839, Sec. 5.

ARTICLE 4.

STATE BONDS.

609. (424.) Consolidated bonds of certain funds. — All bonds issued under the act of February 16, 1885, entitled "An act to provide for the issue of bonds in exchange for the bonds of the State of Florida belonging to the common school fund, and seminary fund, and agricultural college fund, of this State," shall have the same validity as the bonds of the State in exchange for which they were issued, and shall stand in place thereof as provided in said act.

Ch. 1833, Sec. 8, Jan. 26, 1871; Ch. 1937, Sec. 4, Feb. 21, 1873.

610. (421.) Bonds exempt from taxation. — The bonds mentioned in the preceding section shall not be subject to any tax whatever, State, county, or municipal.

Ib., Secs. 12 and 13.

611. (422.) Trustees may invest in. — Trustees, guardians, executors and other fiduciaries are authorized to invest moneys in their hands in such character in said bonds mentioned in Section 609.

Ch. 3233, Mar. 7, 1881; Ch. 3565, Feb. 12, 1885.

612. (423.) Investment of moneys in sinking fund.—The Treasurer shall, on or before the first day of January and July, in each year, with the advice of the Comptroller, invest the moneys which shall be collected by tax for the respective sinking funds of said bonds in United States securities at their market value in the city of New York, or in the purchase of bonds for the payment of which the sinking fund on account of which such purchase is made, is provided, or in the purchase of bonds of other States of the United States, at their market value. The interest from each such sinking fund shall be annually reinvested in like manner.

613. Refunding bonds issued to educational institutions. All bonds issued under act approved May 31st, 1901, Chapter 4947, laws of Florida, issued to the State School Fund to the East and West Florida Seminary Fund, and to the Agricultural College Fund of the State, shall have all the force and validity provided for in said act, which was possessed by the bonds of the State in exchange for which they were issued.

ARTICLE 5.

MISCELLANEOUS

Ch. 2081, Acts 1877.

614. (426.) Certain warrants and certificates to be examined by commission.—Comptroller's warrants or Treasurer's certificates issued prior to July 1, 1871, shall not be received for taxes or paid at the treasury until they have been examined and approved by a commission consisting of the Comptroller, Treasurer and Attorney-General, who are authorized as such commission to pass upon the validity and legality of such warrants and certificates as debts of the State.

615. Party to be reimbursed on reversal of judgment for State.—Whenever, upon appeal or writ of error in civil causes, any judgment in favor of the State has been or shall be reversed and annulled and set aside, which may have been

paid in whole or in part by the plaintiff in error or appellant, the Comptroller is authorized and required to issue his warrant upon the Treasurer to reimburse the plaintiff in error or appellant for all sums paid in discharge of such judgment and costs: Provided, Such plaintiff in error or appellant shall adduce satisfactory evidence to the Comptroller of the sums paid as aforesaid.

TITLE VII.

OF INTERNAL IMPROVEMENTS, PUBLIC PROPERTY AND PUBLIC PRINTING, ETC.

CHAPTER 1.

OF THE INTERNAL IMPROVEMENT FUND.

ARTICLE 1.

616. (428.) Of what the fund consists.—So much of the five hundred thousand acres of land granted to this State for internal improvement purposes, by an act of Congress passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also all the swamp land or lands subject to overflow, granted this State by an act of Congress approved September 28, A. D. 1850, together with all the proceeds that have accrued or may hereafter accrue to the State from the sale of such lands; are set apart, and declared a separate and distinct fund, called the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of this chapter. Ch. 610, Acts 1855, Sec. 1

(Application of funds to building hard roads: See Sections 869-871.)

617. (429.) Trustees, their powers and duties.—For the purpose of assuring the proper application of said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expense of selection, management and sale, are irrevocably Ib., Sec. 2

vested in five trustees, to-wit: In the Governor of the State; the Comptroller, the State Treasurer, the Attorney-General and the Commissioner of Agriculture, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom from time to time in stocks of the United States, stocks of the several States, or the Internal Improvement Bonds issued under the provisions of law, and drawing not less than 6 per cent. annual interest; also the surplus interest accruing from such investments. Said trustees shall have all the rights, property, powers, claims, remedies, actions, suits and things whatsoever belonging to them or appertaining before and at the time of the enactment hereof, and they shall remain subject to and pay, fulfill, perform and discharge all debts, duties and obligations of their trust existing at the time of the enactment hereof or provided for herein.

Injunction against trustees in favor of holder of the coupon bonds.—Bailey v. Trustees, 10 Fla., 112. Title of the trustees is not original, should be proved, and may be overcome by superior title.—Magruder v. Logan, 13 Fla., 603. Mandamus will not be granted to compel trustees to convey to relator land previously conveyed by trustees to another.—State ex rel. Dixon v. Trustees I. I. Fund, 20 Fla., 402. I. I. Fund lands become subject to taxation when entered by a person at proper office and evidence to entry obtained.—Mundee v. Freeman, 23 Fla., 529, 3 So. Rep., 153.

Trustees, agents of the State.—Hawkins v. Mitchell et al., Trustees I. I. Fund of Florida, 34 Fla., 405, 16 So. Rep., 31. I. I. Fund not responsible to holders of bonds issued by railroad companies further than interest accruing on the bonds up to their maturity.—Wilson v. Mitchell et al., 43 Fla., 107, 30 So. Rep., 703.

Ch. 734, Acts 1855, Sec. 1.

618. (430.) Details of construction of railroads. — No railroad company shall have any aid, benefit, land or property, of or from said Internal Improvement Fund unless its details of construction be recommended by a competent engineer and approved by the Trustees of the Internal Improvement Fund.

Ib., Sec. 2.

619. (431.) Trustees may designate engineer for certain purposes.—The Trustees of the Internal Improvement Fund may designate any competent civil engineer to examine any railroad or canal or any portion thereof on account of which lands shall be claimed of said fund and to report whether the same is properly completed, and to perform such other duties as said trustees in the administration of said fund may require.

Ch. 610, Acts 1855, Sec. 16.

620. (432.) Trustees to fix price of lands.—The Trustees of the Internal Improvement Fund shall fix the price of the

public lands included in the trust, having due regard to their location, value for agricultural purposes or on account of timber or naval stores, and make such arrangements for the drainage of the swamp or overflowed lands as in their judgment may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the lands; and the said trustees shall encourage actual settlement and cultivation of the said lands by allowing pre-emptions under such rules and regulations as they may deem advisable: Provided, That in no case shall pre-emption for more than one section of land be granted to any one settler.

621. (433.) Alternate sections may be granted.—The alternate sections of the swamp and overflowed lands for six miles on each side may be granted by the Legislature to such railroad companies as they may deem proper. Ib., Sec. 29.

Trustees of I. I. Fund v. The St. Johns Railway Co., 16 Fla., 531.

622. (434.) Grant of alternate sections to railroad and canal companies.—Upon the completion of each section of six miles and fraction of a section of six miles at the terminus of any railroad or canal incorporated under the general law in accordance with such plans and specifications of construction as may have been agreed upon between the Trustees of the Internal Improvement Fund and the board of directors of such railroad or canal company, it shall be the duty of the said board of trustees to convey to such railroad or canal company the alternate sections of swamp or overflowed lands lying on either side of the line of said railroad or canal for a distance of six miles; and when there is an insufficiency of such lands lying along and within the distance aforesaid of such line of railroad or canal to make up the number of acres of land hereby granted them, in that event the deficit shall be located elsewhere and within twenty miles of the line of such railroad or canal in alternate sections as aforesaid: Provided, however, That the lands to be located more than six miles from any such railroad or canal, to supply any deficiencies as aforesaid shall be granted subject to any lien now existing thereon, by reason of any indebtedness incurred under the laws of this State. Ch. 3166, Acts 1879.

623. (435.) Trustees may recover lands forfeited.—Nothing herein contained shall prevent said trustees from taking proper legal steps to recover from any railroad company any of the lands heretofore granted, which may have been forfeited by a breach of the terms and conditions on which said lands were granted. Ch. 1138, Acts 1861, Sec. 7.

624. (436.) Homestead.—Any person being the head of a family or twenty-one years of age, and a citizen of this Ch. 3451, Sec. 1.

State, shall be entitled to purchase eighty acres or less quantity of any lands of the Internal Improvement Fund donated to the State by the act of Congress of September 28, 1850, for the price of twenty-five cents per acre, as provided in the two sections next following.

Ib., Sec. 2.

625. (437.) Title, how obtained.—The person applying for the benefit of the last preceding section shall file with the Commissioner of Agriculture his affidavit that he is the head of a family, or is twenty-one years of age, and is a citizen of this State, and that such purchase is made for the purpose of actual settlement and cultivation and that he has no other homestead, and that such purchase is made for his exclusive use and benefit, and not directly or indirectly for the use or benefit of any other person; and upon filing said affidavit, and the payment of twenty-five cents per acre, he shall receive a title to said land.

Ib., Sec. 3.

626. (438.) Pre-emption right.—When any person entitled to the benefit of the two preceding sections shall have settled on any land subject to purchase under said sections, and shall have made improvements thereon by erecting a building and fencing, and cultivating not less than one acre thereof, he shall have the first right to purchase the land so settled, and any other person desiring to purchase the land so settled shall give to the original settler six months' notice of his intention before being permitted to purchase the same.

Ch. 631, Acts 1855.

627. (439.) Trustees authorized to surrender certain lands to the United States and to receive indemnity.—Whenever it may appear that any of the swamp lands granted by the United States to this State by act of Congress approved 28th of September, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," have been sold or located since the passage of this act, the Trustees of the Internal Improvement Fund are authorized and empowered to surrender to the United States the right, title and claim of the State to said lands, and to receive from the United States in lieu thereof, such reclamation as may be due.

Ch. 3326, Acts 1881.

628. (440.) Grants subject to trusts.—Any and all grants of lands other than the alternate sections within the usual six-mile limit made or that may be made by any act, shall be subject to the rights of all creditors of the Internal Improvement Fund, and to the trusts to which said fund is applicable and subject under the act approved January 6, 1855, and entitled "An act to provide for and encourage a liberal system of internal improvements in this State," and subject to

control, management and sale and application of said fund and the lands constituting the same, by the Trustees of the Internal Improvement Fund, for the purposes of said trust under said act.

629. (441.) Trustees to report to Legislature.—The Board of Trustees of the Internal Improvement Fund are required to report to the Legislature of the State of Florida upon the several matters committed to their charge, and such other matters as may be deemed proper in connection therewith. Ch. 1320, Acts 1862, Sec. 1.

630. (442.) Certain land grants forfeited.—All lands heretofore granted by the State of Florida to any corporation to aid in the construction of a railroad, or a railroad and telegraph line, or to aid in cutting a canal, where any such railroad has not been constructed or canal cut within the time specified in the act making the grant, are declared forfeited to the State, and the State resumes title thereto, and all such lands are restored to the public domain and declared to be a portion thereof: Provided, The forfeiture hereby declared shall not extend to lands adjacent to and coterminous with any portion of said railroad or canal which is now completed: Provided, further, That the provisions of this chapter shall not apply to any of the internal improvement lands granted to the State of Florida by an act of Congress, approved September 4, 1841. Ch. 3911, Acts 1889.

631. (443.) Homesteads on forfeited lands.—Every bona fide settler upon any of the lands forfeited by the preceding section is permitted and authorized to acquire a title to not exceeding one hundred and sixty acres in each case as a homestead, under and pursuant to sections relating thereto, and if such settler is not entitled to the benefit of the homestead law, as provided for by said sections, he shall have the prior right to enter the tract settled on, not exceeding one hundred and sixty acres, at one dollar per acre. Ib., Sec. 2.

632. (444.) Forfeited lands not to enure to other corporations.—No lands declared forfeited to the State under the provisions of this chapter shall enure to the benefit of any other corporation to which lands may have been granted by the State, nor shall this chapter be construed to enlarge the area of lands originally covered by any such grant. Ib., Sec. 3.

633. (445.) Reservations, etc., vacated.—All lists of lands heretofore certified to, or reservations made by the Trustees of the Internal Improvement Fund, for the benefit of any corporation contrary to the provisions of this law, are hereby declared inoperative and void. Ib., Sec. 4.

Ib., Sec. 6.

634. (446.) Extended grants not forfeited.—The provisions of the last foregoing five sections shall not be applicable to and shall not affect any company whose grant has been extended by special act of the Legislature where the time to which any such extension has been made has not yet expired at the time of the passage thereof, but shall apply at the expiration of such extension.

Ch. 5175, Acts 1903, Sec. 1.

635. Trustees to refund money paid where title to land fails.—Any person, firm or corporation having heretofore or who may hereafter purchase in good faith and for value any lands in the State of Florida from the Trustees of the Internal Improvement Fund of the State of Florida, and which title has failed by reason of the fact that the Trustees of the Internal Improvement Fund had no title or right to convey the same, the Trustees of the Internal Improvement Fund shall refund to said party, firm or corporation the sums of money so paid for said lands without interest thereon upon due proof being made.

CHAPTER II.

OF PUBLIC PROPERTY.

ARTICLE 1.—Of public lands. Sections.....708-714
2.—Grants to riparian proprietors and confirmation of certain grants from the State of Georgia. Sections.....715-717
3.—Of fisheries and oysters. Sections.....718-733

ARTICLE 1.

OF PUBLIC LANDS.

Ch. 776, Acts 1856, Sec. 1.

636. (447.) Grant to aid in construction of certain railroads accepted.—The lands, rights and privileges granted to and conferred upon the State of Florida by the act of Congress entitled "An act granting public lands in alternate sections to the States of Florida and Alabama, to aid in the construction of certain railroads in said States," approved May 17, 1856, are accepted upon the terms, conditions and restrictions in said act of Congress.

Ch. 3152, Acts 1879.

637. (448.) Titles of purchasers and transferees of railroad companies confirmed.—To remove all doubt as to the

title of the purchasers and transferees and their assigns from the several railroad companies of the land granted by the United States to the State of Florida, to aid in the construction of certain railroads in this State, by act of Congress, approved May 17, 1856, the State of Florida has granted and confirmed to the purchasers and transferees from the several railroad companies which accepted the provisions of the act entitled, "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, and their assigns, the lands and titles thereto which were granted to the State of Florida by the United States to aid in the construction of certain railroads in this State by act of Congress, approved May 17, 1856, which said lands were afterwards selected and located for the several railroad companies accepting the provisions of this act as aforesaid, along the line of their respective roads, to the extent and in the proportion to which they severally became entitled under the said act to provide for and encourage a liberal system of internal improvements in this State, and the act of Congress granting the same above referred to.

638. (449.) Pre-emption of public lands.—Actual settlers on any of the public lands belonging to this State subject to entry, may and are hereby permitted to enter the lands on which they reside or have in cultivation, not to exceed one hundred and sixty acres, to be taken in a compact form according to the legal sub-divisions, at the prices now or hereafter established for such lands, by paying one-third of the purchase money at the time of making entry, one-third of the same within two years thereafter, and the remaining one-third within three years after the date of entry. Ch. 3324, Acts 1881, Sec. 1.

639. (450.) Application and proof for entry.—The person applying for the benefit of the preceding section shall make affidavit before some officer authorized to administer oaths, that such application is made for his or her exclusive use and benefit, and that his or her entry is made for the purpose of actual settlement or cultivation, and not either directly or indirectly for the benefit of any other person, and that the lands applied for do not embrace the residence, cultivated lands or improvements of any other person, and shall prove by the affidavits of two credible witnesses that he or she is residing upon the land applied for, or has part of the same in actual cultivation. Ib., Sec. 2.

640. (451.) But one entry allowed.—No person shall be entitled to make more than one entry under the provisions of Section 638 of this chapter. Ib., Sec. 3.

641. (452.) Failure to pay installments.—Failure to pay installments on any entry made under the provisions of Ib., Sec. 4.

Section 638 for ninety days after the same shall become due, the entry shall become null and void, and that portion of the purchase money already paid shall be forfeited.

Ib., Sec. 5.

642. (453.) Taxes on land entered.—All persons entering lands under the provisions of Section 638 shall be assessed for and pay taxes on the land so entered, from and after the date of entry and first payment thereon, and a failure to pay the taxes assessed thereon shall cause a forfeiture of all the benefits of this chapter and the part of the purchase money paid in.

ARTICLE 2.

GRANTS TO RIPARIAN PROPRIETORS.

Ch. 791, Acts 1856, Sec. 1.

643. (454.) Statute concerning riparian proprietors.—An act entitled "An act to benefit commerce," approved December 27, 1856, and the grants therein made shall remain in force, which act is as follows:

"Whereas it is for the benefit of commerce that wharves be built and warehouses erected for facilitating the landing and storing of goods; And whereas, The State being the proprietor of all submerged lands and water privileges within its boundaries, which prevents the riparian owners from improving their water lots; therefore,

"The State of Florida, for the consideration above mentioned, divests itself of all right, title and interest to all lands covered by water, lying in front of any tract of land owned by a citizen of the United States, or by the United States for public purposes, lying upon any navigable stream or bay of the sea or harbor, as far as to the edge of the channel, and hereby vests the full title to the same in and to the riparian proprietors, giving them the full right and privilege to build wharves into streams or waters of the bay or harbor as far as may be necessary to effect the purposes described, and to fill up from the shore, bank or beach as far as may be desired, not obstructing the channel, but leaving full space for the requirements of commerce, and upon lands so filled in, to erect warehouses or other buildings, and also the right to prevent encroachments of any other person upon all such submerged lands in the direction of their lines continued to the channel, by bill in chancery, or at law, and to have and maintain action of trespass in any court of competent jurisdiction in the State, for any interference with such property, also confirming to the riparian proprietors all improvements

which may have heretofore been made upon submerged lands, for the purposes herein mentioned."

644. (455.) Not to extend to swamp land.—Nothing in this article contained shall be so construed as to release the title of the State of Florida, or any of its grantees, to any of the swamp or overflowed lands within the limits of the same, but the grant herein contained shall be limited to those persons and bodies corporate owning lands actually bounded by, and extending to low water mark, on such navigable streams, bays and harbors. Ib., Sec. 2.

Geiger v. Filor, 8 Fla., 325; Alden v. Pinney, 12 Fla., 348; Rivas and Koopman v. Solary, 18 Fla., 122; Sullivan v. Moreno, 19 Fla., 200; Ruge v. Apalachicola Canning and Fish Co., 25 Fla., 656, 6 So. Rep., 489; State of Florida v. Black River Phosphate Co., 32 Fla., 82, 13 So. Rep., 640.

645. (456.) Confirmation of certain grants of Georgia.—The titles of bona fide holders of land under any grant from the State of Georgia prior to December 22, 1859, in the territory formerly claimed by the said State, which land is within the State of Florida by the line specified in Section 3 of these General Statutes, remain confirmed so far as this State had the right and power to confirm the same as provided by the act of December, 22, 1859. Ch. 1017, Acts 1859, Sec. 2.

Groover v. Coffee, 19 Fla., 61; Coffee v. Groover, 20 Fla., 6; Coffee v. Groover, 123, U. S., 1.

ARTICLE 3.

OF FISHERIES AND OYSTERS.

646. (468.) Exclusive right to plant oysters.—Any person desiring to plant oysters in the public waters of this State shall apply to the county commissioners of the county in which the waters are situated, setting forth his determination to plant oysters in a certain locality, describing the same as nearly as may be possible, and the said commissioners may grant exclusive rights to such person for such locality or any portion thereof, with such boundaries as they may deem proper. Ch. 3293, Acts 1881, Sec. 1.

647. (469.) Forfeiture.—Any person obtaining from the county commissioners such grant or exclusive right and failing to utilize the same by planting oysters therein within one year thereafter shall forfeit such grant. Ib., Sec. 2.

Ib., Sec. 3.

648. (470. Marks of boundaries.—It shall be the duty of all persons planting oysters, as provided above in this chapter, to mark the boundary limits of the beds of oysters so planted by them by stakes or buoys, as may be prescribed by the county commissioners, at intervals of not more than fifty yards apart, clearly defining the limits of their claim, said stakes or buoys not to obstruct or interfere with the navigation of any navigable waters of this State, and to keep such stakes or buoys standing and in good order and repair, otherwise no penalty shall be incurred or right protected under the provisions of this chapter.

Ib., Sec. 5, Ch. 3754, Acts 1887.

649. (471.) Riparian right.—Transfer of oyster beds.—The provisions of this article shall give no exclusive right or privilege to any person or persons to plant oysters upon the submerged lands of another without consent of the owner thereof; but all persons shall have the right to plant oysters in the bays and harbors of this State, but the riparian owners shall not be disturbed thereby in the use of the land a reasonable distance out from medium tide for the purpose of erecting wharves, warehouses or other permanent improvements thereon; and any owner or lessee of any artificial oyster bed shall have the right to sell, lease, dispose of or transfer his or her interest therein, which sale, lease or transfer or conveyance of property, and all rights and interests therein, shall descend according to the rules of descent as prescribed by law.

Ch. 3293, Acts 1881, Sec. 6.

650. (472.) Limit of bed in front of public lands.—No oyster bed so located in accordance with the provisions of this chapter shall extend more than one-eighth of a mile along the bank or shore of any waters, bayous, rivers or sounds in front of the public or unoccupied lands of this State.

Ib., Sec. 7.

651. (473.) Not to include natural oyster beds.—All the existing natural or maternal oyster beds in the waters of this State are exempt from the provisions of this article, and they remain for the free use of the citizens of this State.

CHAPTER III.

OF PUBLIC PRINTING, ETC.

ARTICLE 1.—Of public printing. Sections.....652-660
2.—Of the purchase of stationery. Section..... 661

ARTICLE 1.

OF PUBLIC PRINTING, ETC.

652. (480.) Public printing to be let to lowest bidder.—All the public printing of the State of Florida shall be let out upon contract to the lowest responsible bidder, who shall furnish all paper and other material used in printing and binding. Ch. 3699, Acts 1887, Sec. 2.

653. (481.) State officers not to be interested in contract. No member of the Legislature or other officer of this State shall be interested, directly or indirectly, in such contract. Ib., Sec. 3.

654. (482.) Printing must be done in the State.—All the public printing of this State shall be done in the State, and the bond given by any contractor for such printing shall so state. Ib., Sec. 4.

655. (483.) Advertisement for bids and duration of contract.—It shall be the duty of the Board of Commissioners of State Institutions to give thirty days' notice by publication in one or more newspapers of this State, calling for bids to do the State printing, as required in this act. The said notice by the commissioners shall specify that separate prices be named for each kind of work and materials to be furnished, carefully classifying them, with an estimate or estimates of the amount of work and material of each class, and further stating the mode of proceeding to let such contract, the amount of bond required, and when the said bond shall be entered into by the accepted bidder; also retaining the right to reject any and all bids. Said notice shall be given immediately after these General Statutes shall become law, so that the contract now in force be succeeded by a new contract immediately after its expiration, and the public printing shall be in like manner contracted for every two years thereafter. Ib., Sec. 5.

656. (484.) Different contracts for different classes.—The board of commissioners may make different contracts for different kinds or classes of printing or binding. Ib., Sec. 7.

657. (485.) Statutes, journals and supreme court reports. The Secretary of State shall furnish true and accurate Ib., Sec. 6.

copies of all the laws, resolutions, petitions and memorials passed by the Legislature, to the contractor, excepting resolutions asking Congress for post routes or appropriations, and the Attorney-General shall prepare and attach thereto marginal abstracts to the several sections and a general alphabetical index to the said entire acts and resolutions, and the contractor shall be bound by his contract to prepare and complete the said matter, printed and bound for use, within sixty days after the adjournment of any Legislature. The said contractor shall be furnished by the Attorney-General with an index to each of the journals of the two branches of the Legislature which, with the said journals, shall be printed and bound without delay. The Attorney-General shall also furnish copy to the said contractor for printing the supreme court reports, and the same shall be printed and bound without delay.

Ch. 1904, Acts 1872, Sec. 8.

658. (486. Number of copies of statutes and disposition thereof.—The contractor shall complete and deliver two thousand copies of said statutes and matter furnished him therewith as aforesaid, together with a statement of the estimated cost of each copy thereof, to the Secretary of State, who shall, as soon as possible after their publication, distribute copies as follows: To the Governor, each cabinet officer, each member of the Senate and House, the secretary of the Senate and clerk of the House, each of the justices of the supreme court, the clerk of the supreme court, the judge of each circuit court, the State attorney for each judicial circuit of the State, each county judge, clerk of the circuit court, sheriff, assessor, and collector of revenue, board of county commissioners, county superintendent of public education for each county, each justice of the peace, mayor of each incorporated city or town in the State, the clerk of the supreme court of the United States, the Attorney-General and each solicitor of the United States, each of the judges, marshals, clerks and district attorneys of each of the district courts of the United States within this State, one copy; to the Secretary of State of each State and territory in the United States, for the use of their offices, three copies; to the secretary of state of the United States, for the use of the government of the United States, three copies; retain for the use of his office three copies and deposit the remaining copies in the State library.

Ib., Sec. 4.

659. (487.) Copies for the county officers to be sent to the clerk.—In distributing the laws the Secretary of State shall forward all copies intended for the officers of each county to the clerk thereof, with a roll containing a list of names of parties for whom they are intended, upon which

roll the clerk shall obtain the receipt of each person to whom a copy is delivered, and return the same to the Secretary of State's office to be placed on file.

660. (488.) Journals of Legislature.—The contractor shall complete and deliver to the Secretary of State two hundred and fifty copies each of the journal of the proceedings of the Senate and House, and the Secretary of State shall, without delay, deliver one copy of each to the Governor, each cabinet officer, each justice of the supreme court, forward one copy of each to the secretary of state of each State and territory of the United States, four copies of each to the secretary of state of the United States, one copy of each to each member of the Senate and House, and retain in his office the remaining copies for gratuitous distribution to any one who may desire a copy and will deposit or forward a sufficient amount to prepay postage thereon. Ib., Sec. 6.

ARTICLE 2.

OF THE PURCHASE OF STATIONERY.

661. (490.) Purchase of blank books, stationery, etc.—The Comptroller is hereby required to purchase from parties in this State manufacturing same, all the blank books, stationery and paper to be used in the different departments, and that the books of record, blank books and stationery of the various counties in this State shall be purchased by the county commissioners from parties manufacturing the same in this State: Provided, That they can be bought on as fair and reasonable terms as elsewhere, taking quality into consideration. Ch. 3727, Acts 1887, Sec. 1.

TITLE VIII.

THE MILITARY AND NAVAL ORGANIZATION OF THE STATE.

CHAPTER I.

THE MILITARY CODE.

ARTICLE 1.

THE RESERVE MILITIA.

Designation of. Section 662
When subject to duty. Section..... 663
How enrolled. Sections.....664-665
Calling into active service. Section..... 666
Penalty for failure to appear. Section..... 667

Ch. 5202, Sec. 1, Acts 1903.

662. Who subject to military duty.—All able-bodied male inhabitants of Florida, including those of foreign birth who have declared their intention to become citizens of the United States, who are more than eighteen and less than forty-five years of age, who are not exempted by the laws of the United States or of this State, shall be enrolled in the militia and be subject to military duty. In addition to those exempted by the laws of the United States, the following persons shall be exempt from military duty: Officers of the State government, judges of the supreme and of all courts of record, members of the Legislature, all county officers except notaries public, all teachers engaged in public educational institutions and public schools, and ministers of the gospel. The militia shall be divided into two classes—the organized militia and the remainder to be known as the reserve militia.

Ib., Sec. 2.

663. When reserve militia subject to duty.—The reserve militia shall not be subject to any active military duty, except when called into the service of the State or of the United States, in which case they, or so many of them as the necessity requires, shall be ordered out by draft or otherwise, as the Governor may direct. The portion of the reserve militia ordered out, or accepted, shall be mustered

into service for such period as may be required, and the Governor shall assign them to existing organizations of the Florida State Troops or organize them as the exigencies of the occasion may require.

664. How enrolled.—The county assessor of each county shall, immediately upon receipt of an order from the Governor of this State to that effect, make a list in triplicate of the names of all persons residing in such county who are liable to military duty; such list shall state the name, residence, age and occupation of the persons enrolled, and their previous or existing military or naval service, and shall be arranged alphabetically and each name numbered consecutively. One copy of the list shall be retained by the assessor, one shall be filed in the office of the clerk of the circuit court of the county in which the enrollment is made, and one in the office of the Adjutant-General. If the Governor so directs, such enrollment shall show separately all the seafaring men of whatever calling or occupation; all men engaged in the navigation of the rivers, lakes, and other waters of the State, or in construction and management of ships and crafts, together with ship owners and their employees, yacht owners, members of yacht clubs, and all other associations for aquatic pursuits. The assessor shall have authority to question under oath, which they are hereby authorized to administer, any person liable to perform military duty, but who denies the same; and if any person refuses to be sworn, the assessor shall enroll his name in the same manner as though he had admitted his liability. If any assessor shall neglect or refuse to perform the duty enjoined upon him by this section, he shall be subject to the same liabilities, penalties and punishments as are prescribed by law for a neglect or refusal to perform any other duties of his office.

Ib., Sec. 3, Revised.

665. Penalty for refusing information.—The assessors in each city, village, town or ward in this State shall allow the county assessor when making an enrollment of militia, at all proper times, to examine their assessment rolls and take copies thereof, and the clerks of all counties, towns, and cities shall in like manner, at all proper times, allow him to examine and copy the poll lists on file in their offices. All persons shall upon the application of any county assessor making such enrollment, give the name of and all other proper information concerning any person within their knowledge liable to be enrolled; and every person who shall refuse to give the information requested, or shall conceal such information, or shall give false information, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of ten dollars for each offence. The

assessor making the enrollment shall, within ten days, report to the Adjutant-General all persons who fail or neglect to give information when requested.

Ib., Sec. 4.

666. How called out.—Whenever any call is made by the President to repel invasion from any foreign nation, to suppress rebellion against the government of the United States or to execute the laws of the Union in any part thereof; or whenever necessary to preserve the public peace, to execute the laws of the State, to suppress insurrection or to repel invasion, the Governor shall call out the whole or as much of the militia of the State as the public necessity demands: Provided, That in the event of such call, or such necessity arising, the Florida State Troops, as then organized, shall be the first troops to be called into actual service. Whenever it becomes necessary to call out any portion of the reserve militia the Governor may appoint the number by draft according to the population of the several counties of the State, or otherwise, and shall notify the sheriff of each county, from which any draft is so required, of the number of persons his county is to furnish. Upon the requisition of the Governor being received by the sheriff he shall immediately notify the clerk of the circuit court of the county, or in case of the absence of such clerk, or his inability to act, then his legally authorized deputy or deputies, who shall repair to the office of said clerk, and in public copy from the assessor's roll of such county, by name or number, persons who are returned as liable for military duty; such names, or their corresponding numbers, shall be placed on slips of paper of the same size and appearance, as near as practicable, which slips so named or numbered shall be placed in a box suitable for the purpose and the number required to fill such draft or requisition, drawn therefrom by the clerk. All persons so drawn and liable to perform duty shall be determined to be legally held to serve in the manner and for the time specified in the requisition, and the sheriff shall notify the persons so drafted, orally or in writing at what time and place they shall appear. The sheriff shall make return to the clerk of all persons drawn, who could not be found, and the clerk shall then draw as many additional names as may be required to complete the draft and continue in like manner until the draft is completed.

Ib., Sec. 5.

667. Penalty for failure to appear.—Every person so ordered out, and who shall not appear at the time and place designated by the sheriff or other proper officer, or who shall not produce some able or proper substitute, at such time and place, unless physically incapacitated, shall be guilty of a misdemeanor, and shall be punished by a fine of not exceed-

ing five hundred dollars, and by imprisonment not exceeding six months, one or both, at the discretion of the court.

ARTICLE 2.

ORGANIZED MILITIA.

Commander-in-Chief. Section..... 668
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Designation and composition. Section..... 673
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668. The Commander-in-Chief.—The Governor shall be the Commander-in-Chief of the militia, except when it is actually called into the service of the United States, and shall have all powers necessary to carry into full effect the provisions of this title. He shall commission all officers, and shall, by and with the consent of the Senate, appoint all general officers of the line, and may fill any vacancy that occurs until the meeting of the Senate. All officers so appointed and commissioned shall hold office for four years, unless otherwise provided by law. Ib., Sec. 6.

669. Personal and general staff.—The Commander-in-Chief shall have a personal staff to consist of not more than ten aids-de-camp, with the rank of colonel, and one military secretary, with the rank of major: Provided, That the com- Ib., Sec. 7, Revised.

missions of the aids-de-camp and of the military secretary shall not continue in force beyond the term of office of the Governor by whom they are appointed; but the provisions of this section shall in no way affect the commission of any officer holding commission at the time of the passage of this act. There shall be a general staff to consist of the several staff departments organized as follows: The adjutant-general's department, which shall consist of an adjutant-general with rank of major-general, two assistant adjutants-general, one with rank of colonel and one with rank of lieutenant-colonel; the quartermaster's department, to consist of a quartermaster-general with rank of colonel and a quartermaster with rank of major; the subsistence department, to consist of a commissary-general with rank of colonel and a commissary with rank of major; the ordnance department, to consist of a chief of ordnance with rank of colonel and an ordnance officer with the rank of major; the inspector-general's department, to consist of an inspector-general with rank of colonel and an inspector-general with rank of major; the judge advocate-general's department, to consist of a judge advocate-general with the rank of colonel and a judge advocate-general with the rank of major; the pay department, to consist of two paymasters, one with the rank of major and one with rank of captain; an inspector of small arms practice with rank of colonel; an engineer officer and a signal officer, each with rank of major; and the medical department, to consist of a surgeon-general with rank of colonel, a surgeon with rank of lieutenant-colonel, three surgeons with rank of major, not more than eight assistant surgeons with rank of captain or first lieutenant, and the hospital corps. The Adjutant-General shall be appointed by the Governor and the remaining officers of the general staff shall be appointed by the Governor upon the recommendation of the Adjutant-General. No person shall be appointed to the general staff who has not held commission in the Army or Navy of the United States, the Confederate States, or in the organized militia of this State for at least two years: Provided, That this shall not apply to assistant surgeons of the medical department.

Ib., Sec. 8.

670. The Florida State Troops.—That portion of the militia organized as a land force shall be known and designated as the Florida State Troops, and shall be composed of able-bodied volunteers between eighteen and forty-five years of age. Every applicant for enlistment shall furnish satisfactory proof of good charcter, and shall, before taking the oath of enlistment, be subjected to a physical examination conforming, as nearly as possible, to the requirements for enlistment in the United States Army, such examinations to be conducted by a medical officer of the Florida State

Troops, or, if this be impracticable, then by any reputable physician or surgeon who may be designated by the commanding officer of the organization which the applicant desires to join; and such medical officer shall furnish a certificate to the effect that the applicant is physically fitted to perform the duties of a soldier, which certificate shall be forwarded, with the oath of enlistment, to the Adjutant-General. No person shall be commissioned as an officer of the Florida State Troops until his fitness for the position has been determined and certified to by an examining board appointed by the Commander-in-Chief: Provided, That this shall not be considered to apply to officers appointed to the general staff, except the medical department, or to the personal staff of the Commander-in-Chief.

671. The oath of enlistment.—Before any person shall be mustered into the service of the State under the provisions of this act, he shall take the following oath: "I do solemnly swear that I will support and defend the Constitution and laws of the United States and of the State of Florida, and that I will observe and obey the lawful orders of the President of the United States, the Governor of this State, and the officers appointed over me, according to the articles and regulations provided for the government of the armies of the United States and of the Florida State Troops, for the period of three years, unless sooner lawfully discharged. And I consent to be mustered into the service of the United States whenever during the term of my enlistment the United States is invaded, or in danger of invasion from any foreign nation, or of rebellion against the authority of the government of the United States, or the President is unable, with the other forces at his command, to execute the laws of the Union in any part thereof, and the organization of which I am a member is called into the service of the United States." All officers of the organized militia of this State shall be empowered to administer oaths of enlistment, and the same shall have the same force and effect as if made before a magistrate or other officer competent to administer oaths. All officers commissioned for service in the Florida State Troops shall, before entering upon their duties, take and subscribe to the prescribed constitutional oath of office, which oath shall be filed with the Adjutant-General. Ib., Sec. 9.

672. Authorized strength.—The Florida State Troops shall consist of the general staff, two regiments of infantry and an artillery corps. This force, and such Naval Militia as is now or may hereafter be authorized by law, shall in time of peace, constitute the only organized militia of this State: Provided, however, The Governor shall have power Ib., Sec. 10.

in case of war, insurrection, invasion, or imminent danger thereof, to increase the force beyond the maximum now established by law, and to organize the same, with the proper officers, as the exigences of the service may require; and it shall be unlawful for any body of men whatsoever other than the regularly organized land and naval militia of this State, the troops of the United States, and the students of regularly chartered educational institutions where military science is a prescribed part of the course of instruction, to associate themselves together as a military organization for drill or parade in public with firearms, in this State, without special license from the Governor for each occasion; and applications for such license must be approved by the mayor and aldermen of the cities and towns where such organizations may propose to parade.

(For penalty for unlawfully participating in drill: See Section 3246.)

Ib., Sec. 11.

673. Organization.—Each regiment of infantry shall consist of a band and the same number of battalions and companies as prescribed for like organizations in the United States Army. The artillery corps shall consist of a major, three first lieutenants for detail as adjutant, quartermaster and commissary respectively; one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, each with the rank, pay and allowances of a battalion sergeant-major of infantry and four companies or batteries of artillery, which may be organized as coast or field artillery, at the discretion of the Commander-in-Chief. All regiments, battalions, companies, batteries or bands of the Florida State Troops shall be organized and officered as is now or may hereafter be prescribed by law or in orders for co-relative organizations in the United States Army; and the minimum number of enlisted men of each company, battery and hospital corps shall in time of peace, be such as may be fixed by order of the President. The formation, conformation and size of each infantry band shall conform to the requirements of bands in the regiments of infantry of the United States Army. The regimental commanders of infantry shall appoint the regimental non-commissioned staff officers and the non-commissioned officers of the band; they shall, upon the recommendation of the battalion commanders, appoint the battalion non-commissioned staff officers, and upon the recommendation of the company commanders shall appoint the non-commissioned officers of the companies. The commander of the artillery corps shall appoint the non-commissioned officers of artillery. Every non-commissioned officer shall receive a warrant of his rank from the officer appointing him. Every non-commissioned officer may be

reduced to ranks by sentence of a court-martial or summary court, or by order of the regimental commander, or the commander of the artillery corps, issued upon the recommendation of his immediate commanding officer.

674. Medical department, how organized.—No assistant surgeon shall hold the rank of captain until he has served at least two years as first lieutenant, and all surgeons shall be appointed from among the assistant surgeons of the medical department. The hospital corps shall consist of as many sergeants first class, sergeants, corporals, privates first class and privates as are appropriate to the organizations composing the Florida State Troops, based upon the number prescribed for co-relative organizations in the United States Army. The surgeon-general shall enlist, or cause to be enlisted, men for the hospital corps, and may recommend the requisite number of sergeants first class, sergeants and corporals to the Adjutant-General for appointment; but all persons so recommended for appointment shall be regularly licensed physicians or pharmacists of this State. Ib., Sec. 12, Revised.

675. Formation of brigade.—The Commander-in-Chief may organize the Florida State Troops into a brigade, and appoint one Brigadier-General to command it; but no other general officer of the line shall be appointed unless it becomes necessary to call the reserve militia into active service. No person shall be eligible for appointment as Brigadier-General who has not served foi five years as a commissioned officer in the Florida State Troops, or in the regular or volunteer forces of the United States. Ib., Sec. 13.

676. New companies, how formed.—Whenever the minimum number of men who are eligible for military duty shall associate themselves together for the purpose of forming a military company, they may apply to the Commander-in-Chief, through the Adjutant-General, to be organized as such, and shall designate the persons selected as commissioned officers. If the application is approved, the persons so selected to be commissioned officers shall be directed to appear before an examining board and if found to be qualified, may be commissioned. An officer will then be detailed to muster the organization into service. The muster roll will be made in duplicate, one copy to be retained by the company, and the other, together with the enlistment paper of each soldier, will be forwarded to the Adjutant-General with the report of the mustering officer. Ib., Sec. 14.

677. Organizations may incorporate.—When any company or band has been organized under this act, it may be- Ib., Sec. 15.

come a body corporate, with power to sue and to be sued by its corporate name; to hold, own and acquire property, real, personal and mixed, and to dispose of the same, by virtue of letters patent, which shall be issued by the Secretary of State upon the application of such company, battery or band. The officers of such company or battery, the chief musician, principal musician and drum major of such band shall constitute the board of directors of such respective organization.

Ib., Sec. 16.

678. Term of enlistment.—The term of service of an enlisted man shall be three years: Provided, That any enlisted man serving his second term or other consecutive enlistment shall, after the expiration of the first year thereof, be entitled to an honorable discharge upon request therefor. Soldiers who re-enlist within three months after the expiration of their former terms of enlistment shall be considered to have served continuously.

Ib., Sec. 17.

679. Unlawful to enlist in two organizations.—It shall be unlawful for any person to enlist in two military organizations at the same time.

Ib., Sec. 18.

680. Discharges.—No enlisted man, when duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the Commander-in-Chief, or by sentence of a court-martial. Every enlisted man shall be promptly discharged upon the expiration of his term of service, unless under arrest or charges; but the expiration of his term of service shall not ipso facto operate as a discharge, and he shall be subject to military discipline until actually discharged. Honorable discharges will be given: First, upon completion of term of enlistment; second, upon application of the soldier or of his immediate commanding officer, based upon any of the following grounds: Physical disability, supported by a certificate of a medical officer of the troops or any reputable physician or surgeon; engagement in business such as precludes the soldier from properly performing his military duty; removal of residence beyond the limits of the organization to which he belongs, and when specially ordered by the Commander-in-Chief for any other reason. Discharges without honor may be given: First, without trial, on account of fraudulent enlistment; second, without trial, on account of having become disqualified for service physically or in character through his own fault; third, on account of imprisonment under sentence of a civil court; fourth, where

the service has not been honest and faithful, i. e., where the service does not warrant his re-enlistment; fifth, when especially ordered by the Commander-in-Chief for any other reason. No dishonorable discharge will be given except by sentence of a court-martial. Soldiers under charges or undergoing trial shall remain subject to the articles of war and military law until tried and acquitted or convicted and sentence executed. No person shall be re-enlisted in the Florida State Troops who did not receive an honorable discharge therefrom for his former term or terms of service.

681. Contributing members.—Not more than ten honorary contributing members may be enrolled in each company or battery, each of whom shall, upon the payment to such organization annually on or before the fifteenth day of December, of not less than ten dollars, become exempt from jury duty for the next following calendar year. It shall be the duty of the commanding officers of companies and batteries to furnish the clerk of the court of their circuit, on or before the first day of January of each year, for the information of the county commissioners in making a list of persons to serve as jurors, a roll of all active and honorary members of their command. Ib., Sec. 19.

682. Examination required for commission.—Every person commissioned as an officer in the Florida State Troops, shall, unless otherwise specially provided by law, be examined as to his qualifications for office, and no person shall be appointed until he has passed a satisfactory examination as to his capacity, general qualifications and knowledge of military affairs proportionate to the requirements of the office for which he has been selected. The Commander-in-Chief may appoint examining boards composed of not less than two officers, to conduct such examinations, and whenever any candidate for commission shall fail to appear before a board, as directed, he shall be considered to have failed to qualify, and commission will not issue. The Commander-in-Chief may also convene examining boards to determine the fitness of officers for promotion; and also, whenever to him it appears advisable, or upon the request of any superior commanding officer, may order any officer before a board for examination as to his fitness for practical service, and upon report of the board, if adverse to the officer, may declare his commission vacated; and if any officer so ordered before a board, shall neglect or refuse to appear, the Commander-in-Chief may, upon report to him of such refusal or neglect, vacate the commission of the officer. Ib., Sec. 20.

683. Assignment and transfer of officers.—Officers of all grades in each arm of the service shall be assigned to regi- Ib., Sec. 21.

ments, transferred from one regiment to another, as the interests of the service may require, by order of the Commander-in-Chief, and all appointments in the line will be by commission in the arm of the service and not by commission in any particular regiment. The Commander-in-Chief may divide the State into regimental and battalion districts, and all field officers shall be residents of the military district in which their regiment or battalion is situated. Field officers permanently removing from the military district of their organization shall be considered to have resigned, and unless delinquent or responsible for public property or funds, the Adjutant-General shall announce a vacancy, which will be filled after the manner prescribed in regulations. All company or battery officers must be residents of the station of their organization or its vicinity.

Ib., Sec. 22.

684. Rank of officers.—Commissions of officers shall bear the date of actual issue, but each officer shall take rank from the date he finishes his examination, which date shall be expressed in the commission. Officers of each grade shall take precedence according to the date of their rank, and when two of the same grade are of the same date, their precedence shall be determined by length of service, continuous or otherwise, in the military forces of the State, or of the United States; and if of equal service, then by lot. Officers who are reappointed, serving continuously in the same grade, shall rank from the date expressed in their original commission to such grade. Officers of the Florida State Troops are of superior rank to officers in the reserve militia of the same grade. In no case shall any colored officer command white troops.

685. The supernumerary list. — Commissioned officers who shall be rendered surplus by reduction or disbandment of organizations, or by being relieved from duty while awaiting settlement of their accounts, or in any other manner, shall be withdrawn from active service and placed on the supernumerary list. The Governor may detail supernumerary officers for active duty, and he may relieve them from such duty and return them to the supernumerary list at his discretion.

Ib., Sec. 23.

686. Removal and discharge of officers. — A commissioned officer may be honorably discharged upon the acceptance of his resignation, upon the expiration of his term of office, or upon the disbandment of the organization to which he belongs. The Commander-in-Chief may vacate the commission and drop from the roll of the Florida State Troops the name of any officer upon the recommendation of a board

of examiners when it appears that the officer is unable or unfit to discharge the duties of his office or exercise proper authority over his inferior officers and soldiers; when he has been convicted of infamous crime by a civil court; when he has been absent from duty without leave for more than thirty days, or when he has disobeyed an order to appear before a board of examiners. No officer shall be dismissed from the service in time of peace except by a sentence of court-martial, and no officer who has been dismissed from the service by sentence of court-martial, properly approved by the reviewing authority, shall ever be restored to the service.

687. Right of officer removed.—When any officer who has been removed by order of the Governor makes in writing an application for trial, setting forth under oath that he has been wrongfully removed, the Commander-in-Chief shall, as soon as practicable, convene a court-martial to try such officer upon the charges upon which he shall have been removed. Ib., Sec. 24.

688. The retired list.—When any commissioned officer or enlisted man has served ten consecutive years in the Florida State Troops, he may, upon application to the Governor, be retired from active service and placed upon the retired list. When any officer has reached the age of sixty-four years, or becomes permanently disabled for the performance of duty by reason of wounds or sickness, he may, at the discretion of the Governor, be so retired and placed upon the retired list. Officers and enlisted men on the retired list shall have the right to wear, on appropriate occasions, the uniform prescribed for the highest grade attained by them during their active service, without corps, department or regimental designation. Any officer or enlisted man who has heretofore been honorably discharged after ten consecutive years' service may be placed on the retired list herein created, upon his own application. Ib., Sec. 25.

689. Attendance of military schools of United States.—Upon the application of any officer of the Florida State Troops, the Governor may recommend that such officer be authorized to attend any college or military school of the United States, and may relieve him from duty for such time as may be required to pursue the regular course of study at such college or school. While so engaged the officer is entitled to the allowances provided for in Section 16 of the Act of Congress of January 1, 1903. Ib., Sec. 26.

690. The uniform.—The uniform of the Florida State Troops shall be the same as is prescribed for the United Ib., Sec. 27.

States Army, except that the Commander-in-Chief may authorize the use of such insignia or collar device as will be distinctive of this State.

Ib., Sec. 28.

691. Officers supply own uniform. — All commissioned officers shall provide themselves with such uniforms and arms as may be prescribed for their use.

Ib., Sec. 29.

692. Uniforms provided enlisted men. — Every enlisted man shall be furnished with a uniform.

Ib., Sec. 30.

693. Property to be accounted for.—The uniforms, necessary arms, accouterments, equipment and military stores obtained through the national appropriation for arming and equipping the militia are and shall remain the property of the United States and shall be accounted for in the manner prescribed by law and the regulations.

Ib., Sec. 31.

694. Receipts for public property and funds; bonds.— Every officer to whom public funds or property is issued shall receipt for the same, and shall give a bond, in such sum and with such surety or sureties as may be required by the Governor, for the proper expenditure of, and the care and safe keeping of all public funds and military property which may at any time be under his control or in his charge and to account for the same; which bond shall be approved by the board of county commissioners of the county in which the officer is stationed, and shall be filed with the Adjutant-General. Upon the discharge, removal, dismissal or death of an officer who has given bond for the safe keeping of public funds or property, he or his legal representative shall be released from responsibility upon filing with the Adjutant-General the receipt of the officer succeeding him, for all public funds or property with which he is charged, and the certificate of such officer that the articles so transferred are, at the date of the certificate, in good order and condition, reasonable use and wear thereof excepted. All accounts will be finally settled by the Adjutant-General.

Ib., Sec. 32.

695. Penalty for loss or destruction of military property. Every person who shall wantonly, carelessly or intentionally lose, injure or destroy any uniform or other military property issued by the State, and refuse to make good such injury or loss, or shall sell or dispose of, remove or secrete the same with intent to sell or dispose thereof, or who shall refuse to produce the same when ordered so to do by proper authority, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not exceeding six

of c ths, or by both such fine and imprisonment, at the dis-
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be 696. Penalty for misuse of military property.—Whoever
s or wears, except in the performance of military duty, Ib., Sec. 33.
upon public parades, by special permission of the commanding officer, any article of the uniform or other article of military property issued by the State, or whoever shall le d the same, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding fifty dollars, or by imprisonment in a county jail not exceeding three months; and if the person be in the military service of the State he shall also be deemed guilty of conduct to the prejudice of good order and military discipline and be punished by a military court.

697. Penalty for wearing the uniform by unauthorized persons.—Any person who shall wear any uniform, or any device, strap, knot or insignia of any design or character used as a designation of rank, grade, or office, such as are by law or by general regulation, duly promulgated, prescribed for the use of the active militia; except members of the Army and Navy of the United States, the organized militia of this or any other State, members of associations wholly composed of soldiers honorably discharged from the service of the United States, Confederate States, or of any State, and members of the order of Sons of Veterans, or Sons of Confederate Veterans, and the faculty and students of regularly chartered educational institutions where military science is a prescribed part of the course of instruction; shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten and not more than one hundred dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment at the discretion of the court.

698. Colors and flag to be furnished.—Each regiment shall be furnished by the Adjutant-General, upon requisition Ib., Sec. 34.
of the regimental commander, with the national colors and a regimental flag.

699. Organization, armament and discipline.—The organization, armament and discipline of the Florida State Ib., Sec. 35.
Troops shall be the same as that which is now or may hereafter be prescribed for the regular or volunteer armies of the United States, and the articles of war governing the armies of the United States shall be applicable to and shall govern the Florida State Troops in so far as they are not inconsistent with the Constitution and laws of this State.

Ib., Sec. 36.

700. Rules and regulations, how promulgated.—The Adjutant-General is hereby authorized to prepare and promulgate articles, rules and regulations for the government and discipline of the Florida State Troops, not inconsistent with the Constitution and laws of the United States or of this State, which articles, rules and regulations, when approved by the Governor, shall be published to the troops and shall be enforced, and a copy of the same shall be filed in the office of the Secretary of State.

Ib., Sec. 37.

701. May adopt constitution and by-laws.—Any company, battery or band may adopt such constitution and by-laws for its government and discipline, not inconsistent with this article and the regulations prescribed by the Adjutant-General, as a majority of the members of such organization may deem proper, and such constitution and by-laws, when approved by the Adjutant-General, shall have the force and effect of regulations.

Ib., Sec. 38.

702. Military courts.—The military courts of this State shall consist of general courts-martial, regimental courts-martial, garrison courts-martial, the summary court and courts of inquiry. They shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punishment, as similar courts provided for by the laws of the United States, organized under the articles of war, and the rules and regulations of the United States Army. The proceedings of general courts-martial shall be assimilated to the forms and modes of procedure directed for like courts by the articles of war and the general rules and regulations for the government of the armies of the United States; and the proceedings of regimental and garrison courts-martial, the summary court and courts of inquiry shall be assimilated to the mode of procedure in regimental and garrison courts-martial, the summary court and courts of inquiry in the armies of the United States.

Ib., Sec. 39, Revised.

703. Courts-martial.—General courts-martial may be convened by order of the Commander-in-Chief or any general officer, and such courts shall have power to impose fines not exceeding one hundred dollars; to forfeiture of pay and allowances; to sentence to a reprimand; dismissal or dishonorable discharge from the service; to reduce non-commissioned officers to ranks; to sentence enlisted men to confinement when in the field, on camps of instruction, practice marches, or whenever engaged in active military duty; such confinement shall, however, not extend beyond the time of the return to its home station of the organization

to which such men belong and its relief from duty; or any two or more of the said punishments may be combined in the sentence imposed by such courts. Regimental courts may be appointed by every officer commanding a regiment or corps, for his own regiment or corps; garrison courts may be appointed by the commanding officers of any garrison, fort, post or other place where the troops consist of different corps, for such garrison or other place; and said regimental and garrison courts-martial shall have the same powers of punishment as general courts-martial, except that fines imposed by such courts shall not exceed fifty dollars. But no sentence to dismissal from the service or dishonorable discharge, shall be executed until approved by the Commander-in-Chief. Presidents of courts-martial shall have power to issue warrants to the sheriffs of the State to arrest accused persons and bring them before the court for trial whenever such persons have disobeyed an order in writing of the convening authority to appear before such court, a copy of the charge or charges being delivered to the accused with said order, and shall have authority to issue subpoenas for the attendance of witnesses and to punish a refusal to be sworn or answer as provided in civil actions.

704. Duties of sheriff.—The president of any court-martial assembled in pursuance of this article may make a requisition upon the sheriff of the county in which the session is held for a deputy sheriff to attend upon the court, and such deputy sheriff shall receive for his attendance and services the same pay and fees and be subject to the same responsibilities as when attending upon the sessions of the circuit court. The pay and fees of such deputy shall be paid by the State, upon the certificate of the judge advocate, approved by the Adjutant-General, out of the fund for the maintenance of the Florida State Troops. Ib., Sec. 40.

705. Sentences of courts-martial, how enforced.—No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being. When the officer ordering the court, or the officer commanding for the time being, approves a sentence of a court-martial imposing a fine on an offender, said offender shall have a period of ten days from the publication of the findings and sentence of said court-martial and the approval thereof by such officer, within which to pay such fine to his immediate commanding officer, who shall at once remit the Ib., Sec. 41.

amount of said fine to the State Treasurer to be credited to the fund from which the contingent expenses of the Adjutant-General's office are paid, by whatever name such fund may be known and designated. When such fine and sheriff's fees are not paid within the time prescribed, said immediate commanding officer of the delinquent shall at once report such fact to the officer ordering the court, or the commanding officer for the time being; and it shall be the duty of the officer ordering the court, or the commanding officer for the time being, to issue his warrant, directed to the sheriff of the county where the offender is, commanding him to arrest the delinquent and keep him confined in the jail of said county until the fine and sheriff's fees are paid, or until the delinquent has been kept in confinement in said jail one day for each dollar, or fraction thereof, of the fine and sheriff's fees. It shall be the duty of the sheriff receiving such warrant to execute it promptly and make proper return of how he has executed the same to the officer by whom it was issued.

706. Powers to commute, remit, and pardon.—The Governor shall have power to remit or commute sentences imposed by military tribunals, or to pardon the offender. Every officer who is authorized to order a general court-martial shall have power to remit or mitigate any punishment adjudged by it, except the dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.

707. Court-martial proceedings, how disposed of.—The reviewing authority of every court-martial shall, with as much expedition as the opportunity of time and distance of place may permit, forward the original proceedings and sentence of such court to the Adjutant-General's office, where they shall be carefully preserved.

Ib., Sec. 42.

708. The summary court.—The commanding officer of each garrison, fort, post or other place, regiment or corps, detached battalion, or detached company, or other detachment in the militia, shall have power to appoint for such place or command a summary court to consist of one officer who shall have power to administer oaths, and to try the enlisted men at such garrison, fort, post or other place, or of such regiment or corps, detached battalion, or detached company, or other detachment in the militia, for breaches of discipline and violations of the laws governing such or-

ganization; and said court, when satisfied of the guilt of an accused party, may impose fines not exceeding fifteen dollars for the same offense, and sentence non-commissioned officers to reduction to ranks. The proceedings of such courts shall be informal, and the record of minutes thereof shall be the same as is prescribed for summary courts in the Army of the United States. No sentence of said court shall be binding or of effect until approved by the officer appointing the court, or by the officer commanding for the time being. The summary court shall have power to issue warrants to the sheriffs of the State to arrest accused persons and bring them before it for trial whenever such persons have disobeyed an order in writing of the officer appointing such court to appear before it; a copy of the charge or charges being delivered to the accused with said order. The commanding officers authorized to approve the sentences of summary courts, and superior authority, shall have power to remit or mitigate the same.

709. Sentences of summary court, how executed.—Upon the approval of any sentence of a summary court the officer ordering the court, or the officer commanding for the time being, shall at once notify the offender, by registered mail or in person, of the sentence of said court and his approval thereof, and said offender shall have a period of ten days from such notification in which to pay his immediate commanding officer the fine imposed by such court and sheriff's fees. When such fines and fees are not paid within the time prescribed, said immediate commanding officer of the delinquent shall at once report the fact to the officer appointing said court, or the officer commanding for the time being, and it shall be the duty of the officer appointing the court, or the commanding officer for the time being, to issue his warrant, directed to the sheriff of the county where the offender is, commanding him to arrest the delinquent and keep him confined in the jail of such county until the fine and sheriff's fees are paid, or until such delinquent has been kept confined in said jail one day for each dollar, or fraction thereof, of said fine and fees. It shall be the duty of the sheriff receiving such warrant to execute it promptly and make proper return of how he has executed the same to the officer by whom it was issued. Ib., Sec. 43.

710. Summary court fines, disposition of.—All fines imposed upon any enlisted man by any summary court shall at once be paid over by the officer receiving the same to the commanding officer of the organization to which such Ib., Sec. 47.

enlisted man so fined belongs, and will be treated by such commanding officer as public funds. Such funds so obtained may be expended in maintaining the organization and will be accounted for by the responsible officer upon his account current.

Ib., Sec. 44.

711. Additional powers, military courts.—Military courts are empowered to issue all processes and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such mandates and processes may be directed to the sheriff of any county, and shall be in such form as may, from time to time, be prescribed by the Judge Advocate-General and published by the Adjutant-General in the rules and regulations issued by him under this act. It shall be the duty of all officers to whom such mandates or processes are so directed to execute the same and make return of their acts thereunder, according to the requirements of the same. Any officer who shall neglect or refuse to perform the duty enjoined upon him by this article shall be subject to the same liabilities, penalties and punishments as are prescribed by law for neglect or refusal to perform any other duty of his office.

712. Members of courts not liable.—No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceedings, on account of the approval or imposition or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court. The jurisdiction of the courts and boards established by this code shall be presumed, and the burden of proof will rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding.

Ib., Sec. 45.

713. Sheriff's fees.—Fees to sheriffs for service of all process issuing out of military courts shall be the same as provided by law for similar service of process issued by the courts of this State. When the accused has been acquitted, sheriff's costs shall be paid out of the public funds in possession of the commanding officer of the organization to which the accused belongs.

Ib., Sec. 46.

714. May punish for contempt.—Any person who shall be guilty of disorderly, contemptuous or insolent behavior in, or use any insulting or contemptuous or indecorous language or expression to or before any military court, or any

member of such court, in open court, tending to interrupt its proceedings, or to impair the respect due its authority, or who shall commit any breach of the peace, or make any noises or other disturbance, directly tending to interrupt its proceedings, may be committed by warrant under the hand of the president of the court, to the jail of the county in which said court shall sit, there to remain without bail in confinement for a time to be limited, not exceeding three days.

715. Efficiency of troops, officers responsible for.—The officer commanding the organized militia of this State may cause those under his command to perform any military duty, and shall be responsible to the Governor for the general efficiency of the organized militia and for the drill, instruction, inspection, small-arms and artillery practice, and care of the troops. The commanding officers of organizations shall be responsible to their immediate commanders for the equipment, drill, instruction and efficiency of their respective commands. All commissioned officers and enlisted men shall be responsible to their immediate commanding officers for prompt and unhesitating obedience, proper drill, and the preservation and proper use of the property of the United States, State or organization in their possession.

716. How ordered out.—When an invasion of or insurrection in the State is made or threatened, or whenever there exists a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the State, or imminent danger thereof, and the civil authorities are unable to suppress the same, it shall be the duty of the Commander-in-Chief, or in case he cannot be reached and the emergency will not permit of awaiting his orders, it shall be the duty of the Adjutant-General to issue an order to the officer in command of the nearest body of troops, commanding him to proceed with the troops under him, or as many thereof as may be necessary, with all possible promptness, to suppress the same. In any case where neither the Commander-in-Chief nor Adjutant-General can be reached, and the exigency of the occasion shall require it, the county judge of any county where there may exist a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the State, or imminent danger thereof, and the civil authorities are unable to suppress the same, shall have the power and authority, and it shall be the duty of such county judge, upon the application of the sheriff or the mayor of any city or town in said county, to issue an order to the officer in command of any company, or body of

Ib., Sec. 48.

troops, in such county, commanding him to proceed with the troops under him, or as many thereof as may be necessary, with all possible promptness to suppress the same.

Ib., Sec. 49.

717. Duty when ordered out, and penalty for failure to comply.—Any officer receiving such orders shall immediately notify the officers and enlisted men under his command, and as soon as his troops can be assembled, proceed to the place where such mob or body of riotous persons assembled to break the law may be, and he or the sheriff of the county, or other peace officer accompanying him, shall warn all such persons to desist and disperse, and use such force as may be necessary to restore peace and overcome resistance. Any officer failing to comply with the provisions of this section and any officer or enlisted man so notified by his commanding officer, who shall fail to obey such order, unless prevented by physicial disability, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding five hundred dollars, and by imprisonment not exceeding six months, either or both, at the discretion of the court, and may also be dismissed or dishonorably discharged by sentence of a court-martial.

Ib., Sec. 50, Revised.

718. Conduct of military aiding civil authorities.—When an armed force is called out in aid of the civil authorities, the orders of the civil officer or officers may extend to a direction of the general or specific objects to be accomplished and the duration of service by the active militia, but the tactical direction of the troops, the kind and extent of force to be used, and the particular means to be employed to accomplish the objects specified by the civil officers are left solely to the officers of the active militia. Every endeavor must be made, both by the civil officers and officers commanding the troops, which can be, consistently with the preservation of life and property, to induce rioters or persons lawlessly assembled to disperse before an attack is made upon them by which their lives may be endangered.

719. Extent of liability.—Members of the militia ordered into the active service of the State by any proper authority shall not be liable, civilly or criminally, for any lawful act or acts done by them in the performance of their duty.

Ib., Sec. 51.

720. Required to participate in drills, practice marches and encampments.—Every company and battery of the Florida State Troops, not excused by the Governor, shall participate in practice marches or go into camp of instruction at least five and not more than ten consecutive days,

and shall assemble for drill and instruction at company, battalion or regimental armories not less than twice a month, during each year.

721. Governor may order troops beyond State for instruction.—The Commander-in-Chief is authorized to order out the Florida State Troops, and if necessary, to order them beyond the limits of the State, for the purpose of participating in any encampment, maneuvers or field instruction of any part of the regular Army of the United States at or near any military post or camp, or lake or sea coast defenses of the United States, whenever participation in such encampment, maneuvers or field instruction is authorized by the Secretary of War: Provided, That the pay, subsistence and transportation of the troops so ordered out shall be paid as provided by Section 16 of the Act of Congress of January 21, 1903. Ib., Sec. 53.

722. Pay.—When participating in practice marches or attending a camp of instruction, except as provided for under the foregoing section, the Florida State Troops shall receive the following compensation: Officers, two dollars a day; enlisted men, the same pay and subsistence as are at the time allowed by law in the United States Army for their respective grades. When called out under this article to aid the civil authorities, the officers and men of the militia shall receive the same pay and subsistence as at the time are allowed by law in the United States Army. When ordered from home, transportation shall be furnished for officers and men; and when it is inconvenient or impracticable to furnish rations in kind, they may be commuted at not exceeding forty cents per day. Ib., Sec. 53.

723. Pay rolls.—Commanding officers of brigades, regiments, battalions, companies and batteries shall, within ten days after being called out for instruction in the field, or to aid the civil authorities, make and transmit to the Adjutant-General certified pay rolls, in triplicate, of the field, staff and band, companies and batteries, respectively, specifying the name and rank of each man and the number of days present and on duty, and will also submit certified vouchers, in triplicate, for the actual expenses of transportation. Ib., Sec. 54.

724. Pay of courts-martial.—All officers serving on courts-martial shall be considered in actual service and shall be entitled to five cents per mile for traveling expenses, and the same pay as when in attendance at encampments. Witnesses shall be entitled to five cents per mile for traveling Ib., Sec. 55.

expenses and the same pay as witnesss in attendance upon civil courts.

Ib., Sec. 56.

725. Expenditures authorized.—The Comptroller shall, upon requisition of the Adjutant-General, approved by the Commander-in-Chief, draw his warrant upon the Treasurer in favor of the Adjutant General for such expenditures as are authorized under this article, which shall be paid out of any money in the treasury appropriated for the maintenance of the Florida State Troops: Provided, That not exceeding $15,000 shall be paid in any one year to the troops participating in any practice marches or encampment, and for their transportation to and from the same. When the appropriation is insufficient the Adjutant-General may pay the troops pro rata, upon triplicate pay rolls, one copy of each to be filed with the Comptroller, one in the office of the Adjutant-General, and one to be retained by the brigade, regimental, battalion, company or battery commander, as the case may be.

Ib., Sec. 57.

726. Allowances.—There shall be annually paid to the quartermaster of the brigade, each regiment, and each battalion, and quarterly to the commander of each company and battery, to each regimental surgeon for the hospital corps, and to the chief musician of each band, upon his requisition, approved by the Adjutant-General, the following sums for the maintenance of such organizations and for the care of all public property intrusted to their charge: Brigade, two hundred dollars; regiment, fifty dollars; battalion, twenty dollars; company, battery, band, and detachment of the hospital corps, twenty-five dollars. There shall also be paid annually to the Inspector of Small Arms Practice, upon his requisition, approved by the Adjutant-General, the sum of one hundred dollars for the expenses of his department; and also to the Surgeon-General, upon his requisition, approved by the Adjutant-General, the sum of twenty-five dollars for the expenses of his department. These moneys so paid as above provided for shall be treated as public funds and accounted for as may be prescribed in regulations. The rent of armories shall be paid by the State out of a fund to be bi-ennually appropriated by the Legislature.

Ib., Sec. 58.

727. Armories, how obtained.—The commanding officer at every station of the troops may, when authorized by the Adjutant-General, rent an armory for the use of the troops at his station; and if there be two or more organizations in

the same city or town, they shall be quartered in the same armory. Each armory must contain an assembly room of suitable proportions, individual lockers for all men to be quartered therein, and sufficient secure storing room to accommodate all public property issued for the use of the troops at that station. No armory shall be rented or accepted for use by any commanding officer until a plan or description of the building, showing dimensions and appointments, shall have been submitted to and approved by the Adjutant-General.

728. Armories, how controlled.—The Adjutant-General shall have control of all armories and shall prescribe the regulations governing the same. All State and United States property must be kept therein, and the commanders of troops using the armories will be held responsible for the safe keeping and proper care of such property and its protection against misappropriation or loss. Armories, while occupied by troops, shall be considered military posts, and be under exclusive control and jurisdiction of the officer commanding the post. Ib., Sec. 59.

729. Inspections.—The Commander-in-Chief may from time to time require inspections to be made by the Inspector-General or other officer or officers of the Florida State Troops or by any officer or officers of the United States Army who may be detailed by the Secretary of War. And if from the report of any such inspection it shall appear that any public property already distributed, or which may hereafter be distributed to any company, has not been safely kept, or properly housed, or that it has been injured or loaned, or used for other than military purposes, he shall cause the Judge Advocate-General, or other proper officer, to prosecute the bond given by the responsible officer, and may, in his discretion, disband the organization. Ib., Sec. 60.

730. Disobedience of orders, arrest for.—Any officer or enlisted man on military duty who shall disobey the orders of his superiors, or misbehave or demean himself in a manner not becoming an officer or soldier, shall be immediately placed under arrest, and if an enlisted man, shall be disarmed and placed under guard, and shall be tried and punished by a military court-martial according to law and military usage. Ib., Sec. 61.

731. Authority over civilians for interfering with troops. If any person shall intercept, molest or insult by abusive words or behavior, any officer or enlisted man while in the Ib., Sec. 62.

performance of his military duty, he shall be immediately put under guard and kept at the discretion of the commanding officer of the forces engaged in such military duty until the setting of the sun on the day on which the offence shall have been committed, and may then be turned over to the proper civil authorities, and shall be subject to punishment by any court of competent jurisdiction for a breach of the peace.

Ib., Sec. 63.

732. Pensions.—Any member of the Florida State Troops who, while in active service, under Section 716 is wounded or disabled, shall be taken care of and provided for at the expense of the county in which the riot, unlawful assembly or breach of the peace occurred, during such disability; and in case of death or permanent disability in consequence of such wounds, he, or his widow and children if any, or his dependent mother, shall receive a pension, the amount and manner of payment to be the same as is now or may hereafter be fixed by law for soldiers who served in the Confederate States Army.

Ib., Sec. 64.

733. The Adjutant-General. — The Adjutant-General shall receive a salary of two thousand dollars a year, and all orders and instructions emanating from the Commander-in-Chief, and all general regulations, shall be communicated to the troops and to the individuals in the military service through him, and he shall be the organ of all written communications from the Florida State Troops to the Commander-in-Chief. He shall attend the Commander-in-Chief when required in reviews of the Florida State Troops, or whenever ordered in the performance of military duty, and shall obey and issue such orders in relation thereto and to all other military matters, as the Commander-in-Chief may give. He shall be the custodian of all military stores and property and munitions of war not issued to the troops; shall use all necessary care and diligence in the safe keeping thereof and shall turn over the same to his successor or other authorized person. He shall keep in his office an accurate account of all State and United States property in possession of the militia, and shall make up the return of the United States property issued to the State. He shall cause to be prepared and issued to the different organizations of the organized militia all necessary books and blanks for reports, records, returns, and general administration, and shall, at the expense of the State, cause the military laws, military code and regulations in force, to be printed, bound in proper form, and distributed, one copy to each commissioned officer, and to each sheriff and county clerk, to be turned over

by them to their successors in office, and shall procure and supply all necessary text-books of drill and instruction. He shall prepare, attest and distribute all military commissions issued by the Governor, and shall keep a record of the same, and of all changes occurring in the commissioned force. He shall enroll the names of all enlisted soldiers, and shall keep and file in his office all enlistments and descriptive lists, official bonds, the reports and returns of troops and heads of military departments, and all other writings and papers which are required to be transmitted to and preserved at the general headquarters of the State militia.

734. Additional duties of Adjutant-General.—The Adjutant-General shall make returns to the Secretary of War, at such times and in such form as the latter shall from time to time prescribe, of the strength of the organized militia, and shall also make such reports as may from time to time be required by the Secretary of War. He shall annually on or before the second Monday in March, make and submit to the Commander-in-Chief, to be laid before the Legislature, a detailed report of the work of his department, containing a statement of all moneys received and expended by him; showing the amount of military property received and on hand, its condition and in whose possession; showing the actual condition and strength of the organized militia; making such recommendations as he may deem necessary to promote the interests of the service, and transmitting the reports of the other military departments. Ib., Sec. 65.

735. Additional duties of Adjutant-General.—In addition to the foregoing duties and all other duties properly pertaining to the office of Adjutant-General and Chief of Staff, he shall keep all records of Florida volunteers commissioned or enlisted for the war between the States, Indian wars, Spanish-American war, and all other wars or insurrections. He shall assist all persons residing in the State of Florida having claims against the United States for pension, bounty or back pay, where such claims have arisen out of or by reason of service in any of the said wars or insurrections, and shall furnish, to claimants only, all necessary certificates and certified abstracts from the records and documents in his office: Provided, That any or all of the above services shall be rendered without charge to the claimant. The Adjutant-General shall be provided with such accommodations as are furnished administrative and other State officers, and the printing of such forms, blanks and stationery as may be necessary for the proper conduct and administration of his Ib., Sec. 66.

office shall be provided for as is other general public printing. He shall establish and maintain as part of his office a Bureau of Records of the services of Florida troops during the said wars, and shall be the custodian of all records, relics, trophies, colors and histories relating to such wars, now in possession of or which may be acquired by the State of Florida; and such records, relics, trophies, colors and histories shall be catalogued and arranged or filed for general reference and protection in the office of the Adjutant-General at the State capital. The Adjutant-General shall have a seal of office, to be approved by the Commander-in Chief, and all copies of records or papers in his office, duly certified and authenticated under the said seal, shall be evidence in all cases in like manner as if the originals were produced.

Ib., Sec. 67.

736. Duties of other officers.—The duties of the members of the general staff, other than the Adjutant-General, shall be such as usually pertain to those officers and such as they may be ordered to perform by the Commander-in-Chief or the Adjutant-General. On or before the last day of each year the chiefs of the various staff departments, the Commanding General of the Brigade, and the commanding officer of each regiment and separate battalion, shall make to the Adjutant-General a report of the operations and transactions of their respective departments or commands, together with such recommendations as they may desire to make.

Ib., Sec. 68.

737. Exemption from jury duty.—All officers and enlisted men of the Florida State Troops shall be exempt from jury duty if they desire it.

ARTICLE 3.

NAVAL MILITIA.

Designation and composition of. Section..... 738
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738. The naval force.—There may be organized a battalion of naval militia, to consist of not more than four divisions, and to be known as the Florida Naval Militia, which shall constitute a portion of the militia force of this State. Ch. 4569, Sec. 1, Revised.

739. Where divisions may be formed.—Divisions may be formed in the vicinity of any seaport in the State of Florida, and when so formed and offered to the State may, in the discretion of the Commander-in-Chief, be accepted, until the battalion is complete as herein provided. Ib., Sec. 2.

740. Organization.—The officers of said battalion shall be one lieutenant-commander, who shall command the same; one lieutenant, who shall act as battalion adjutant and executive officer; one lieutenant to act as navigator and ordnance officer, and one ensign to act as signal officer and assistant to navigator and ordnance officer. The commanding officer of each division shall be a lieutenant, and in addition thereto there shall be one lieutenant, junior grade, and two ensigns, and also an engineering officer with the rank of ensign, and one surgeon and physician, with the rank of ensign; and each division shall consist of such number of petty officers and men as the Commander-in-Chief may from time to time order and direct. Ch. 5013, Acts 1901, Sec. 1.

741. Naval secretary.—There shall be upon the staff of the Governor a Naval Secretary, who shall have the naval rank of captain, and whose duties shall be such as the Governor may from time to time direct in the interest of the Florida Naval Militia. Ibid.

742. Staff officers.—The commisioned staff officers of the battalion shall be one paymaster, one surgeon and one chaplain, each with the rank of lieutenant, junior grade, and one assistant surgeon, with the rank of ensign. There shall also be allowed to the battalion a petty staff to consist of such petty officers as the Commander-in-Chief may order and direct. Ch. 4569, Sec. 4, Acts 1897.

743. Manner of forming divisions.—A division of naval militia may be formed in the same manner as is provided for the formation of a company of Florida State Troops. The naval battalion shall be constituted as soon as two divisions are completely organized. Ib., Sec. 5.

744. Officers, how selected.—The lieutenant-commander and lieutenant to act as navigator and ordnance officer and Ib., Sec. 6.

the ensign to act as signal officer and assistant to navigator and ordnance officer, shall be elected by the commissioned officers of the battalion; lieutenants, lieutenants junior grade, and ensigns shall be elected by the ballots of the members of their respective divisions: Provided, That in all such elections a majority of the ballots of the qualified voters shall be requisite to an election. The staff officers of the naval battalion shall be appointed upon the recommendation of the lieutenant-commander, and the petty officers by the lieutenant-commander.

Ib., Sec. 7.

745. Organization and discipline.—The organization of the naval militia, and its system of discipline and exercise, shall conform, as nearly as possible, to that of the Navy of the United States. It shall be governed by the laws and regulations as now provided for the governing of the Florida State Troops, as far as the same may be applicable; and the Governor, as Commander-in-Chief, shall have power to order, divide, annex, consolidate or disband the said battalion whenever in his judgment the efficiency of the Sate forces will be thereby increased; and he shall have power to make such rules and regulations as may be deemed proper for the use, government and instruction of said battalion. Such rules and regulations shall conform to the provisions of this article, and as nearly as possible to those governing the United States Navy.

Ib., Sec. 8.

746. Uniform.—The uniform of the Florida Naval Militia shall be such as the Commander-in-Chief may direct.

Ib., Sec. 9.

747. Relative status of land and naval forces.—A battalion of naval militia shall be considered the equivalent of a battalion of land militia, and a division of naval militia shall be considered the equivalent of a company of land militia, and equally in the State's service, and they shall be entitled to equal rights, privileges and allowances, except as otherwise provided in compliance with this article.

Ib., Sec. 10.

748. Relative rank of officers.—The rank of officers in the naval militia is naval rank, and corresponds with army rank as indicated in the United States Army and Navy regulations. The relative position of seamen in the naval militia is that of privates in the Florida State Troops; the relative position of petty officers shall be fixed by the Commander-in-Chief.

Ib., Sec. 11.

749. As to equipping the naval militia.—The Governor is authorized to make the necessary arrangements for carry-

ing the provisions of this article into effect as soon as the government of the United States is ready to supply arms and equipments, and necessary material and opportunities for naval instruction and drill. And the Governor is further authorized to apply to the President of the United States, or the Secretary of the Navy of the United States for the loan of a practice vessel for the use of the naval militia, and the detail of commissioned and petty officers of the Navy to act as inspectors and instructors. The duty of the naval militia may be performed afloat in the vessels of the United States, or elsewhere, as the Commander-inChief may direct.

CHAPTER II.

PENSIONS.

State Board, who constitute. Section..... 750
Who to receive pensions. Sections..... 751-752
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ARTICLE 1.

750. The Governor, the Comptroller and Attorney-General of this State are hereby constituted the State Board of Pensions. Ch. 4894, Acts 1901, Sec. 3.

751. Who to receive pensions.—Any person who enlisted and served in the military or naval service of the Confederate States or of this State during the war between the States of the United States, and did not desert the Confederate or State service, and who was a bona fide citizen of this State January 1, 1885, who has since continued to be a citizen of this State, who lost a limb or limbs, an eye or eyes, or who is permanently disabled by reason of wounds or disease to gain a livelihood by manual labor or who being more than sixty-five years old is by reason of age incapable of providing a living for himself, shall be entitled to receive each per annum in quarterly payments, the following amounts, to-wit: Ch. 4894, Acts 1901, Sec. 1.

For total loss of sight, $100.00.
For loss of one eye, $25.00.
For loss of a foot or leg, $80.00.
For loss of a hand, $80.00.
For loss of both hands, $100.00.
For loss of both feet, $100.00.
For loss of one hand and one foot of same person, $100.00.
For personal injuries, disease or age whereby the person is unable to earn a livelihood by manual labor, $96.00.

Ch. 5109, Acts 1903, Sec. 1.

752. Widows to receive pension.—The widow of any deceased soldier or sailor who enlisted and served in the military or naval service of the Confederate States or this State, during the war between the States of the United States, and did not desert the Confederate or State service, shall be entitled to receive the sum of ninety-six dollars per annum, in quarterly payments: Provided, That such widow was lawfully married to such deceased sailor or soldier prior to January 1st, 1885; and Provided, Such widow was a resident of the State of Florida on January 1st, 1890, and has since continuously resided therein; and Provided further, That no widow who owns property, real or personal or real and personal, to the value of eight hundred dollars, shall be entitled to the provisions hereof. The provisions of this article shall not apply to any widow after her re-marriage.

Ch. 4894, Acts 1901, Sec. 1.

753. Persons not entitled to receive pensions.—No person who, or whose wife, or any widow who owns property, real or personal, or real and personal, to the value of eight hundred dollars, or is otherwise enabled or in a position to earn a livelihood, or who has an income from any source sufficient for support, shall be entitled to receive pension.

No person receiving a pension from the United States or from any other State shall be entitled to a pension under this article.

Ib., Sec. 1.

754. Persons retained as pensioners.—Persons drawing pensions under previous acts of the Legislature of Florida are retained and entitled to the benefits of this chapter.

Ib., Sec. 1.

755. Application, proof of service.—The payment of new claims shall date from their allowance. The applicant shall make oath before the clerk of the circuit court of the county in which he resides, stating company in which he enlisted and date and cause of expiration of his service, the character and extent of his disability, citizenship and rights to the

benefits of this article, and that he has not purposely disposed of property for the purpose of availing himself of the benefits of the provisions of this article. He shall furnish the affidavit of a commissioned officer of his company, or of any two soldiers of his regiment, or the affidavit of the adjutant of the camp of United Confederate Veterans or of any two citizens of his county showing that he rendered the service, or is a member in good standing of a camp of veterans, and that disability exists, and also the affidavit of a reputable physician showing the nature and extent of disability.

756. Duty of board of county commissioners.—The board of county commissioners of the county in which the applicant resides shall investigate all claims made under this article and report upon the application whether or not the pension applied for should be granted. Ib., Sec. 1.

757. Blanks.—The State Board of Pensions shall furnish annually suitable blanks for making such reports. Ib., Sec. 1.

758. Paid by warrant of Comptroller.—All sums required for the payment of pensions to applicants under the provisions of this article shall be paid by warrants drawn by the Comptroller on the Treasurer of the State, in favor of the applicant for the sum to which he or she may be entitled, out of any moneys in the treasury not otherwise appropriated. Ch. 5109, Acts 1903, Sec. 2.

759. County commissioners to annually examine pension rolls.—The county commissioners of each county shall at least once in each year examine the pension rolls of their respective counties and ascertain whether or not any person on said pension roll should be dropped from same by reason of not being entitled to draw said pension under the provisions of this article, and make report of their findings to the State Board of Pensions, who are hereby authorized to drop such pensioners from the list, if, in their judgment the same should be done. Ib., Sec. 3, amending Sec. 1, Ch. 4894, Acts 1901.

760. Certificate.—The State Board of Pensions shall forward to each pensioner a certificate that he is entitled to draw a pension, which shall be prima facie evidence to the clerk of the circuit court, and they shall provide all necessary blanks. Ch. 4894, Acts 1901, Sec. 1.

761. Pension tax.—There shall annually be assessed and collected a tax of one mill per dollar on all property liable to assessment, which shall constitute a fund for the pay- Ib., Sec. 2.

ment of pensions, the proceeds of which shall be applied to the payments of pensions. Should the sum raised be insufficient to pay the full amount of all pensions allowed, then the same shall be distributed pro rata to the persons entitled to pensions.

Ch. 5109, Acts 1903, Sec. 4.

762. State board to make rules and regulations.—The State Board of Pensions shall prescribe rules and regulations for the carrying out of the provisions of the pension laws of this State, see that said laws are complied with, and shall make reports and recommendations to the Governor at least thirty days before the meeting of the Legislature. Said board may make such rules and regulations for the conduct of their business as they may deem proper, not in conflict with the spirit and purpose of the pension laws. They may employ a clerk at a salary not exceeding five hundred dollars per annum, payable quarterly out of the State treasury, on the certificate of the chairman of said board.

(Approval of vouchers by notary: See Ch. 5444, Appendix.)

ARTICLE 2.

EX-CONFEDERATE SOLDIERS' HOME.

Ch. 4250, Acts 1893, Sec. 1.

763. In lieu of land grant.—In lieu of the lands granted or attempted to be granted by an act of the Legislature of the State of Florida, entitled "An Act to grant certain public lands and the proceeds thereof to aid in the establishment and maintenance of a Confederate Soldiers' and Sailors' Home in the State of Florida," approved June 8, 1891, there is thereby appropriated, to be paid to and upon the requisition of the executive committee of the "Old Confederate Soldiers' and Sailors' Home Association," payable quarterly, upon the approval of the Governor, out of the general revenue of the State treasury, the sum of one hundred dollars per annum for each and every disabled and indigent ex-Confederate soldier and sailor who is an inmate and receiving the benefits of the said Soldiers' and Sailors' Home, under the rules and regulations of said association, to be used by them in aid of the maintenance and support of said home: Provided, The sum hereby appropriated shall not exceed twenty-five hundred dollars per annum: Provided further, That no money shall be drawn for any person receiving a pension from the State of Florida.

764. Annual report.—The president of the "Old Confederate Soldiers' and Sailors' Home Association," shall make an annual report on the first day of January of each year, of the condition and operations of said home, embracing the names of all beneficiaries thereof, when admitted, died or discharged, and a financial statement of said institution. (See Ch. 5445, Appendix.)

Ch. 4250, Acts 1893, Sec. 2.

TITLE IX.

OF COUNTY ORGANIZATION, OFFICERS AND REGULATIONS.

CHAPTER I.

OF COUNTY COMMISSIONERS.

ARTICLE 1.—Of commissioners' districts. Sections.....765-768
2.—Powers, duties and compensation of county commissioners. Sections.....769-780

ARTICLE 1.

OF COMMISSIONERS' DISTRICTS.

765. (573.) Division of counties into districts.—Each county shall be divided into five districts, by geographical lines, the same being section and township lines, as nearly as practicable, for the purposes of this article. Each of said districts shall be proportioned so as to make them as nearly equal in population and territory as possible. The districts now existing shall remain as now constituted until changed as hereinafter provided.

Ch. 3723, Acts 1887, Secs. 1 and 2.

766. (575.) Publication of districts.—The county commissioners shall designate each of said districts by a number, and shall cause an accurate description of each of such districts to be entered upon the minute books and be published once a week for four weeks in a newspaper published in said county, or, if there be no newspaper published therein,

Ib., Sec. 5.

the same shall be posted for four consecutive weeks at the court house door therein, and in some conspicuous place in each election district.

Ib., Sec. 6.

767. (576.) Clerk to send description to Secretary of State.—Each county clerk shall, immediately after the division of his county into districts, as aforesaid, make a copy of the descriptions of said districts as established by the county commissioners, and the numbers thereof, which shall be certified to be correct by such clerk and by the chairman of the board of county commissioners, and shall be by said clerk forthwith transmitted to the Secretary of State, who shall file the same in his office, and shall record the same in a book to be kept for that purpose.

Ib., Sec. 7.

768. (577.) Change of districts.—Any such district or districts may be changed or altered on a petition of two-thirds of the registered voters of the said district or districts, and by a vote of three-fifths of the county commissioners, once in every five years; but such change shall not become operative until the expiration of the term of the commissioner who shall be holding by election for such district so to be changed; and upon any such change or alteration of any district, like proceedings shall be had as to publishing, filing and recording the same as hereinbefore specified, upon the original establishment of such district.

ARTICLE 2.

POWERS, DUTIES AND COMPENSATION OF COUNTY COMMISSIONERS.

Ch. 1882, Sec. 1, Feb. 16, 1872, Ch. 3039, Sec. 1, March 2, 1877.

769. (578.) Powers and duties.—The board of county commissioners of each county shall have power, at any legal meeting, to elect one of their number chairman, and to make such orders concerning the care of and the improvement of the corporate property of the county as may be deemed expedient, and also:

First—To build and keep in repair county buildings, roads and bridges.

Second—To cause county buildings to be insured in the name of the treasurer of the county for the benefit of the county, whenever the same shall be deemed expedient; and

in case there are no public buildings, to provide suitable rooms for county purposes.

Third—To represent the county in the prosecution and defence of all legal causes.

Fourth—To have care and provide for the poor and indigent people of the county.

Fifth—To alter, lay out, maintain, establish, vacate or discontinue any road or highway in their respective counties.

Sixth—To grant licenses for keeping ferries and toll bridges for a term of years not exceeding ten, and to prescribe the rate of ferriage or toll.

Seventh—To order the county clerk to transcribe any book or books of record whenever the same are not properly bound or are mutilated.

Eighth—To fix and approve bonds of county officers, as provided by law.

Ninth—To regulate the compensation of the county clerk while acting for the county or for the board of county commissioners.

Tenth—To issue bonds in their respective counties for the purpose of erecting a court house, jail, to build or construct roads and to fund the present outstanding indebtedness, and to prescribe the rate of interest thereon: Provided, That no bonds shall be issued except the same shall be ordered by a majority of the registered voters in the respective counties.

Eleventh—To apportion and order the levy of all county taxes in accordance with the law, either for specific or general purposes, except when otherwise provided by law.

Twelfth—To approve all accounts against the counties.

Thirteenth—To make such regulations, and pass such resolutions for the protection and preservation of the bridges in their respective counties as they may deem neccessary to secure that object.

Fourteenth—To fine any person who may be guilty of contempt to their body while in session in a sum not exceeding twenty dollars, or to imprison such person not exceeding twenty-four hours for such offence.

Fifteenth—To adopt a seal.

Sixteenth—To perform all other acts and duties which may be authorized by law.

Charges against a county must be authorized by law. No officer can bind the county unless there is authority, either expressed or necessarily implied, given by law.—County of Nassau v. Downie, 16 Fla., 171. Indebtedness must be such as county may legitimately incur under express or clearly

implied power given by the statute, else it will not be liable.—Payne v. Washington County, 25 Fla., 798, 6 So. Rep., 881. The incorporation of a town including a part of a public road does not abolish such road therein included, nor revoke the powers or duties of the county commissioners concerning same.—State ex rel. Commissioners of Putnam County, 23 Fla., 632, 3 So. Rep., 164; Johnson v. Wakulla County, 28 Fla., 720, 9 So. Rep., 690; Ray, Treasurer, v. Wilson, 29 Fla., 342, 10 So. Rep., 613.

Ch. 4141, Sec. 1, Acts 1893.

770. To inspect offices.—The county commissioners of the several counties shall, at least once every three months, inspect the offices and records of the county judge, sheriff and clerk of the circuit court and other officers of their respective counties, and see that the laws prescribing and regulating the duties of said officers are being fully complied with; and it shall be their duty to report to the Governor of the State any failure on the part of such officers to perform their duties.

Ib., Sec. 2.

771. Completing work in vacated offices.—Whenever the term of any of such officers shall have expired, or any of said officers shall have died, resigned or been removed from office, leaving undone any work required by law to be done by said officer and for which he has received the compensation, the county commissioners may have such work done by the successor of such officer, at the expense of the county, and may recover the amount paid out by them to have said work done by suit in the name of the county, on the official bond of said officer whose duty it was to have done said work, and it shall be the duty of the State attorney of the circuit in which said county is situated to institute and conduct said suit.

Ch. 863, Jan. 15, 1859, Ch. 156, Dec. 27, 1847; Ch. 370, Jan. 14, 1851.

772. (579.) To keep open books and publish statements. The board of county commissioners of each county shall keep proper minutes of their proceedings and proper books of accounts of their dealings with the county finance. They shall keep their books open for inspection. They shall make out at their first regular sitting in every year, a full and complete statement of all moneys collected by county tax, or otherwise received for county purposes, and the disbursements of the same; stating the name of each person to whom, and upon what acccount, the same was paid, and the date of said payment; and they shall cause at least two copies of the same to be posted in two of the most public places in their said county, one of which shall be the court house; and if there is a newspaper published in said county they shall cause a publication of the said statement to be made, provided the expense of said publication shall not exceed ten dollars. They shall deliver to the foreman of the grand

jury a copy of said statement at the first session of the circuit court of said county next ensuing the time specified for making out said statement, and it shall be the duty of the said grand jury to examine into the correctness of said statement, and report thereon to the judge presiding at said court.

773. (580.) To sue and be sued in name of county.—The county commissioners of the several counties shall sue and be sued in the name of the county of which they are commissioners. A change in the persons composing the board of county commissioners shall not abate the suit, but it shall be proceeded with as if such change had not taken place.

Ch. 3242, Acts 1881, Secs. 1 and 3.

774. (581.) Service of summons on.—In all suits against counties service of the writ of summons shall be made upon the chairman of the board of county commissioners, or, if he cannot be found, on two members of the board.

Ib., Sec. 2.

775. Compensation of commissioners.—The county commissioners shall be paid two dollars per day for each day's service, and ten cents per mile for each mile actually traveled in going to and from the court house: Provided, That their per diem pay shall not exceed one hundred dollars each per annum.

Ch. 4911, Acts 1901, Sec. 1.

(Purchasing blood hounds: See Ch. 5415, Appendix.)

(Powers as to abstracts of title: See Secs. 2505-2512.)

776. (583.) Clerk.—The clerk of the circuit court for the county shall be clerk and accountant of the board of county commissioners. He shall keep their minutes and accounts, and perform such other duties as their clerk as the board may direct. He shall have custody of their seal, and shall affix the same to any paper or instrument to which it shall be proper or necessary that the same shall be affixed. And he may give copies of writings in his custody as the clerk of said board, attested by his signature and authenticated by said seal.

Must keep record.—Johnson v. Wakulla County, 28 Fla., 720, 9 So. Rep., 690.

777. Secretary of State to furnish certified copies of acts of the Legislature.—Within sixty days from the adjournment of each session of the Legislature the Secretary of State shall furnish to the clerks of the boards of county commissioners of the several counties of this State certified copies of the acts of this Legislature which are of a general and permanent nature.

Ch. 5199, Sec. 1, Acts 1903.

Ib., Sec. 2.

778. County commissioners to designate paper for publication of acts.—The boards of county commissioners of this State, at their first regular meeting after the receipt of the certified copies of the acts of the Legislature from the Secretary of State, shall designate one daily or weekly newspaper which has been continuously published for a period of not less than one year in their respective counties, in which the acts as certified by the Secretary of State shall be published one time.

Ib., Sec. 3.

779. Compensaton to newspapers.—The acts shall be published as certified by the Secretary of State, and the publisher of the paper designated by the board of county commissioners shall receive as compensation for the said publication the sum of one hundred dollars, which amount shall be paid by the Comptroller on receipt of affidavit of said publication by the publisher of the newspaper in which said acts have been published, that the publisher of said newspaper has mailed one copy of the issue containing said laws to each registered voter in said county, and the bill for said work duly approved by the board of county commissioners of the county in which publication is made.

Ib., Sec. 4.

780. Payment.—Payment for these publications shall be made from any money in the State treasury not otherwise appropriated.

CHAPTER II.

OF COUNTY FINANCES.

ARTICLE 1.—Regulations concerning county finances. Sections.....781-785
2.—County bonds. Sections.....786-807

ARTICLE 1.

REGULATIONS CONCERNING COUNTY FINANCES.

Ch. 2086, Acts 1877.

781. (584.). Issue and payment of warrants.—No warrant shall hereafter be issued upon the county treasurer, unless countersigned and attested by the chairman of the board of county commissioners, and warrants shall be issued only by order of the board of county commissioners made in open session. The clerk of said board shall sign

the same and affix the seal of the county commissioners thereto, and shall number each warrant with its appropriate number; and the number and amount of each warrant, with the name of the person in whose favor the same shall be issued, shall be furnished to the county treasurer within ten days after the same shall have been issued. The treasurer shall not pay any warrant before receiving notice from the clerk of the board of county commissioners, stating the number and amount of such warrant, and to whom issued. It shall be the duty of every board of county commissioners to keep a record of all warrants in the order in which they are issued, with the numbers of the same, which record shall be presented to each grand jury for its inspection and examination, and no money for any purpose whatever shall be drawn from the county treasurer except upon a warrant issued and attested as hereinbefore provided in this article.

782. (585.) Warrant to specify on what fund drawn.—The county commissioners shall, whenever they issue a warrant on the county treasurer, state specially in said warrant the fund upon which the same is drawn, and no warrant shall be drawn upon any fund except that for which said fund was raised, and no county treasurer shall pay any warrant that it not drawn in conformity with the terms of this section. Ch. 3725, Acts 1887.

783. (586.) Funds to be kept separate.—The board of county commissioners of each county shall furnish the county treasurer with a receipt book, with forms of receipts and with blank spaces for the amounts to be filled therein, and with stubs to correspond, which receipts and stubs shall designate separately each fund for which county taxes are collected, and it shall be the duty of the collector on making any payment of moneys or funds collected for taxes to the county treasurer to inform him of the sum of each collected, for or on account of such county fund, and the county treasurer shall fill out and deliver to the collector a proper receipt from said receipt book, designating what is received from the collector for each county fund separately, and the treasurer shall keep a copy of such receipt on the corresponding stub in such receipt book. Ib., Sec. 2.

784. (588.) Refusal to pay warrant to be noted.—The county treasurer shall enter in a book to be kept by him for that purpose, the fact of the refusal to pay, or non-payment of any warrant which may be presented to him, as such treasurer, and include in such entry a description of the war- Ch. 3420, Acts 1883; Ch. 4409, Acts 1895, Sec. 1.

rant or order, and by whom presented, and date of presentation, and his reason of such refusal or non-payment; and he shall also, at the request of the person presenting the same, endorse on the back of such warrant the fact of such refusal or non-payment and reason therefor, and shall pay such warrants in the order of their presentation. The board of county commissioners of each county shall furnish the treasurer a book for the purpose above specified, which shall be open to the inspection of all citizens.

Ch. 2086, Acts 1877, Sec. 3.

785. (589.) Limitation of claims.—Every claim against any county shall be presented to the board of county commissioners within one year from the time said claim shall become due, and shall be barred if not so presented.

ARTICLE 2.

OF COUNTY BONDS.

Ch. 4711, Acts 1899, Sec. 1.

786. Purposes for which county bonds may issue.—Whenever the board of county commissioners of any county shall deem it expedient, or to the best interests of such county, to issue the county bonds of their county, for the purpose of constructing paved, macadamized, or other hard-surfaced highways, or erecting a court house or jail, or other public buildings, and funding the outstanding indebtedness of the county, or for any of such purposes, they shall determine by resolution to be entered in their records, what amount of bonds is required for such purpose, the rate of interest to be paid thereon, and the time when the principal and interest of such bonds shall be due and when payable.

Ch. 4286, Acts 1893, Sec. 1.

787. Commissioners may levy tax.—When any county bonds shall have been issued by the county commissioners of any county of the State of Florida, under authority of law, for the purpose of erecting a court house, jail, armory, or other county buildings, it shall be the duty of such county commissioners to levy annually, by tax upon taxable property in the county, a sum sufficient to pay the interest upon the said bonds, and also a sum sufficient to raise the amount annually required as a sinking fund to meet the principal of the bonds, which sinking fund shall be provided for by resolution of the board of county commissioners before the issuing of any of the said bonds.

788. (592.) Publication of resolution.—Before any such bond shall be issued, the resolution mentioned in the previous section shall be published in the several newspapers printed in the county at least once in each week for four weeks before the election mentioned in the next section, but if no newspaper be published in the county, publication shall be made in some paper published in the judicial circuit which includes such county. Ch. 2088, Acts 1877, Sec. 2.

789. (593.) Election.—After determining the amount of bonds proposed to be issued, the board of county commissioners shall appoint a day for the holding of an election, not less than four weeks' notice of which shall be published in the manner prescribed in the preceding section, at which the question shall be submitted to the legal voters of the county whether such bonds shall be issued; and the form of the ballots for such election shall be, "For Bonds," or "Against Bonds;" such election shall be held at the several places where the last general election was held in said county, unless the county commissioners shall otherwise order, and the county commissioners shall appoint the inspectors of election for each precinct. Ib., Sec. 3.

790. (594.) Conduct and canvass of election.—Such election shall be conducted, and the canvass of the votes certified to and returned, and the canvass of the returns made in the manner and within the time prescribed for general elections, except as in this chapter otherwise provided, and except that the returns shall be delivered to the chairman and clerk of the board of county commissioners, instead of the supervisor of registration and the county judge, and that the board of county commissioners shall canvass the returns and declare the result, and cause the same to be recorded in their minutes. Ib., Sec. 4.

791. (595.) Result of election.—If it shall appear by the returns of said election that a majority of the votes cast upon the subject shall be "For Bonds," the county commissioners shall be authorized and required to issue such bonds as may be necessary for the purposes specified in their resolution as published, and not exceeding the amount therein named; but if a majority of the votes shall have been "Against Bonds," no bonds shall be issued. Ib., Sec. 5.

792. Notice for bids and disposition of bonds.—In case the issuing of bonds shall be authorized by the result of such election, the county commissioners shall cause notice to be Ch. 5200, Acts 1903, Sec. 1.

given publication in a newspaper published in the county (or in some paper published in the same judicial circuit, if there be none published in the county) that they will receive bids for the purchase of county bonds at the clerk's office, on or before the expiration of 30 days from the first publication of such notice. The notice shall specify the amount of bonds offered for sale, the rate of interest, and the time when the principal and installments of interest shall be due and payable. Any and all bids may be rejected if the commissioners shall deem it for the interest of the county so to do, and they may cause a new notice to be given in like manner inviting other bids for said bonds: Provided, That such bonds shall not be sold for less than ninety-five cents upon the dollar.

Ch. 2088, Acts 1877, Sec. 8.

793. (597.) Security may be required of bidders.—The county commissioners may require of all bidders for said bonds that they give security by bond, running to the county treasurer, with sureties, that the bidder will comply with the terms of the bid, and any bidder whose bid shall be accepted shall, with his sureties, be liable to the county for all damages on account of the non-performance of the terms of his bid.

Ib., Sec. 9.

794. (598.) Form of bids.—All bids for bonds shall specify the amount of bonds bid for, the denomination required and the time when the bidder will comply with his bid, and shall also specify whether the bid is in current money or in evidences of indebtedness against the county.

Ib., Sec. 7.

795. (599.) Form of bonds.—The county commisssioners may prescribe the form and the denominations of the bonds to be issued, and such bonds may be issued with or without interest coupons, as may be deemed expedient.

Ib., Sec. 10.

796. (600.) Disposition of proceeds.—The proceeds of all bonds sold for money shall be paid over to the county trustees, to be distributed by them for the purposes for which such bonds were sold, and for no other purposes.

Ib., Sec. 11.

797. (601.) Cancellation of exchanged evidences of indebtedness.—When such bonds shall be sold or exchanged for the evidence of indebtedness of the county, such evidence shall be cancelled in such manner that the same cannot again be used, and memorandum of all such evidences of indebtedness shall be made in the minutes of the board, so that the same may be identified. Such cancelled vouchers shall be sealed in an enclosure and filed for future reference.

798. (602.) Tax for interest and sinking fund.—When any county bonds shall have been issued in pursuance of this article, it shall be the duty of the county commissioners to levy annually by tax upon the taxable property in the county a sum sufficient to pay the interest of said bonds, and also a sum sufficient to meet the amount annually required to be raised as a sinking fund to meet the principal of the bonds, which sinking fund shall be provided for by resolution of the board of county commissioners before the issuing of any of the said bonds. Ib., Sec. 12.

799. (603.) Trustees.—When the county commissioners shall have issued bonds as aforesaid, they shall appoint by resolution of their board, to be recorded in the minutes, a financial committee of three persons, who shall be resident free holders of the county, to be styled trustees of county bonds, who shall each give bond running to the county treasurer, with sufficient sureties, in such sum as may be required by the county commissioners, conditioned that the said trustee shall faithfully discharge the trust confided to him, and shall pay over and duly account for all such sums of money as may come into his hands by virtue of such trust, which said bonds shall be approved as to the form and the sufficiency of sureties by the board of county commissioners; and the county commissioners may, from time to time, as circumstances may require, demand additional security from any such trustee. Ib., Sec. 13.

800. (604.) Collector to pay taxes to trustees.—All money collected to pay the interest, or for a sinking fund of said bonded debt, shall be paid over by the tax collector or other person receiving the same on account of taxes collected or property sold therefor to the said trustees, and the said trustees are required to pay out of the moneys so received the interest of said county bonds, and to invest the residue in the bonds aforesaid, or in bonds or stocks of the United States bearing interest, to be held as an accumulating fund for the ultimate redemption of said county bonds. Ib., Sec. 14.

801. (605.) Annual report of trustees.—The said trustees shall annually on such day as may be required by the board of county commissioners render a report to the said board, in which they shall state the amounts of money received and for what purposes and from what sources, severally, and when received, and where and how the same has been invested, and enumerating the kind and amount of securities held therefor, describing the same separately, and such other matters as may be required by the board in order Ib., Sec. 15.

to a full understanding; which said report shall be published at length by order of the board.

Ib., Sec. 16.

802. (606.) Resignation and removal of trustees.—The said trustees, or either of them, may resign at any time by a communication in writing to the board of county commissioners, and any number of said trustees may be removed for cause by the judge of the circuit court of the circuit in which the county is situated, upon petition signed by any bondholder or tax payer, setting forth the cause of complaint; but no trustee shall be removed without notice, and an opportunity to be publicly heard, unless it appears that the accused trustee has absented himself so that notice could not be served.

Ib., Sec. 17.

803. (607.) Filling of vacancies in board of trustees.—In all cases where vacancies shall occur, they shall be filled by nomination of the trustees, and the confirmation by the board of county commissioners; and in case the said trustees do not within fifteen days after written notice of the existence of such vacancy, appoint a suitable person to fill such vacancy, the board of county commissioners shall nominate a suitable person to fill such vacancy, whose nomination shall be confirmed by an order of the circuit court, and the person so appointed as trustee shall give security as hereinbefore provided.

Ib., Sec. 18.

804. (608.) Compensation of trustees.—The said trustees shall have such compensation for their services as may be allowed by law to the county treasurer, for the safe keeping and disbursement of the moneys which may come into their hands as said trustees, to be paid out of the county treasury.

Ch. 4912, Acts 1901, Sec. 1.

805. Certain bonds declared valid.—Whenever any bonds of any county have been issued since May 11, 1899, for the purpose of constructing any paved, macadamized or other hard-surfaced highway, or for erecting a court house or jail, or for either or any such purposes, and the same shall have been intended to be issued pursuant to the provisions of article 2, chapter 2, title 9, part 1, of the Revised Statutes of 1892 of this State, as amended by legislation subsequent to the enactment of such Revised Statutes, such bonds shall not be held invalid on account of any irregularity in the proceedings taken for the issue of the same; but whenever any such bonds have been disposed of by the county authorities for value as required by such provisions of law, then any and all bonds so disposed of shall be of full force and effect the

same as though no such irregularity had occurred: Provided, however, That nothing herein shall be held to impair the right of any innocent holder for value of any such bond or bonds, or of any one claiming by or through or under any such innocent holder for value; and Provided, further, That this section shall not apply to any bonds issued by any county officers other than those authorized by law.

Ch. 5253, Acts 1903, Sec. 1.

806. County bonds for building public highways. Defects cured.—Whenever any county bonds for the purpose of constructing macadamized and other hard-surfaced highways in such county, and to fund the outstanding indebtedness of any such county, or for either or both of said purposes, shall have heretofore been favorably voted upon at a county election held for such purpose, and afterwards advertised for sale, such bonds be and they are hereby declared legal and valid, and they shall not be held invalid on account of any irregularity in the proceedings taken prior to the advertisement of said bonds for sale, and all defects and other irregularities in such proceedings are hereby cured and the sale of such bonds is hereby authorized and permitted according to the provisions of the Revised Statutes of the State of Florida of 1892, article 2, chapter 2, title 9, part 1; and whenever any such bonds have been disposed of by the county authorities for value in accordance with said provisions of the Revised Statutes as subsequently amended, or have been offered for sale, but have not been fully sold by delivery to the purchaser, then any and all such bonds so offered for sale or disposed of shall be of full force and effect and have the same validity as if no irregularity had occurred in the proceedings in regard to the issuance and sale of said bonds: Provided, always, That this article shall not apply to any bonds issued by any county officer other than those authorized by said provisions of the Revised Statutes as so amended.

Ch. 5254, Acts 1903, Sec. 1.

807. Legalizing tax for highways, etc.—Any tax heretofore assessed or collected for the purpose of paying any interest on any bonds of any county in this State, or for a sinking fund, to pay said bonds, issued for the purpose of constructing macadamized or other hard-surfaced highways in such county, and to fund the outstanding indebtedness of any such county, or for either or both such purposes, shall be and the same is hereby validated and legalized to all intents and purposes, and such tax so assessed shall be collected; such tax as has been collected by the tax collector of any county in this State, shall be accounted for by him as is now provided by law.

CHAPTER III.

OF THE ERECTION OF CERTAIN COUNTY BUILDINGS.

Ch. 3421, Acts 1883, Sec. 1.

808. (609.) Notice and tax.—Whenever any board of county commissioners shall deem it necessary to erect any court house or jail, they shall give notice for thirty days, in some newspaper published in the county, or in some newspaper published in the judicial circuit if there be none published in the county, that at the next regular meeting of the board after the publication of the said notice, the question of erecting a court house or jail, or both, will be acted upon by said board. If at said meeting a majority of said board shall determine that it is necessary to erect such building or buildings, they may levy a building tax, not exceeding two mills per annum, for two consecutive years, in lieu of all other county building tax. The tax so levied shall be assessed and collected at the same time and in the same manner as other State and county taxes are levied and collected.

Ch. 4590, Acts 1897, Sec. 1.

809. Contract for building.—The contract for the building of such court house or other public building or buildings, shall be in writing and shall be filed in the office of the clerk of the circuit court, and the said contract shall provide that the whole amount due for the building of such court house or other public building shall not be paid until the said building or buildings shall have been inspected by the county commissioners; and twenty per cent. of the original contract for the erection of said building or buildings shall remain unpaid until such inspection by the county commissioners is made and the court house or other public building or buildings is accepted by the county commissioners.

CHAPTER IV.

OF THE COUNTY TREASURER.

Ch. 4589, Acts 1897, Sec. 1.

810. Accounts of treasurer.—It shall be the duty of every county treasurer to open an account with himself in a well bound book, to be furnished by his county, and he shall charge himself with all moneys which he may officially receive, giving therefor his receipt, in duplicate, specifying the

source from whence received, the date of receiving and on what account, and the amount, in distinct and separate items, which shall show the amount of currency and the amount of script, and the respective kinds and amounts thereof; and the officer, State or county, paying money or script into the treasury and receiving duplicate receipts as above provided shall forthwith file one of such duplicate receipts with the clerk of the circuit court, for the inspection of the board of county commissioners of his county at their first session thereafter. And in like manner he shall credit the said accounts with all payments, setting out the amount, date, and the name in whose favor the order for payment is drawn, and the date of payment. The account shall be properly balanced on the first day of January, April, July and October in each year.

811. County treasurer to register warrants when not paid.—The county treasurers of the several counties of the State of Florida shall be required to register all county warrants on presentation thereof by holders, and note date of registration on back of said warrant when payment thereof is refused by reason of lack of funds. Ch. 5183, Acts 1903, Sec. 1.

812. To be paid in order of registration.—The county treasurers of the several counties of the State of Florida shall pay all warrants in the consecutive order of their registration: Provided, That the holder of any warrant must present the same within ten days after notification of treasurer that there are funds to meet the same, and after which notification all interest shall cease. Ib., Sec. 2.

813. Penalty for failure.—Failure on the part of the several county treasurers hereinbefore mentioned to comply with the provisions of this chapter shall be deemed sufficient cause for removal, and the Governor is hereby authorized to remove any and all county treasurers who may violate the provisions of this chapter: Provided, That nothing in this chapter shall be construed as requiring counties to pay interest on warrants after presentation to the treasurer. Ib., Sec. 3.

814. Account books to be kept by treasurers, sheriffs and clerks.—It shall be the duty of all county treasurers, sheriffs and clerks of the circuit court and ex-officio clerks of the boards of county commissioners of this State, to keep books of account and of record in accordance with forms to be approved by the State Auditor, except such books and forms as are now otherwise provided for by law. Ch. 5176, Acts 1903, Sec. 1.

815. County commissioners to furnish books.—It shall be the duty of the county commissioners to furnish the books provided for in the foregoing section. Ib., Sec. 2.

Ib., Sec. 3.

816. Treasurer to balance books and render statements. It shall be the duty of the county treasurer to properly balance the books on the first day of each month and to render to the county commissioners and to the county school board respectively, at their first regular meeting in each month, full statements of receipts and disbursements during the previous month.

Ib., Sec. 4.

817. Penalty for failure.—Any officer who shall neglect or refuse to comply with the duties imposed by this chapter shall be subject to suspension from office by the Governor.

Ch. 1883, Acts 1872, Sec. 4.

818. (613.) Forfeiture of commissions.—No county treasurer who shall fail for three months during any year to perform the duties required hereby shall be entitled to any commission or compensation as treasurer during said year.

Ch. 2085, Acts 1877.

819. (614.) To be treasurers of school funds.—The county treasurers of the several counties in this State shall be and the same are hereby constituted the treasurers of the school funds in their respective counties.

Ch. 5182, Acts 1903, Sec. —.

820. Fees of treasurer of school fund.—The treasurer of the county school fund shall be paid for receipts and disbursements of county school funds the same commissions allowed by law to county treasurers for receipts and disbursements of county funds, the said commissions to be paid by the county board of public instruction from the county school fund upon vouchers approved by the county board of public instruction.

Ch. 1981, Acts 1874, Sec. 11.

821. (615.) Fees.—The fees of the county treasurers shall be as follows: For receiving the first five hundred dollars, one and one-half per cent; for all over five hundred dollars, one per cent.; for paying warrants or other evidence of county indebtedness, the same as allowed for receiving.

CHAPTER V.

BONDS OF COUNTY OFFICERS.

Ch. 3724, Acts 1887, Sec. 1.

822. (616.) Bonds required by county officers.—Each of the county officers of whom a bond is or shall be required by law, shall, before he is commissioned, give bond, with not less than two securities, or a surety company as hereinafter specified, to the Governor of the State of Florida and his successors in office, conditioned for the faithful perform-

ance of the duties of his office, which shall be approved by the board of county commissioners and Comptroller, and be filed with the Secretary of State.

823. (617.) Bond of tax collector.—The tax collector of each county shall give bond in a sum equal to two-thirds of the entire amount of the State and county taxes assessed in his county for the year preceding the year in which the bond is required to be given: Provided, That in no case shall such bond be required for more than thirty thousand dollars. Ib., Sec. 5.

Repeal of statute making penal failure of collector to pay over money collected, and refusal of Governor to suspend collector, do not constitute defence in favor of sureties in suit on breach of collector's bond.—State v. Smith et al., 16 Fla., 175. The fact that the assessor did not attach a warrant for collection of taxes to the roll is not a defence for sureties sued on collector's bond for moneys which he collected on said assessment and failed to pay over. Nor does the fact that State officers did not inform sureties that collector had been a defaulter in a previous term constitute a defence for sureties.—State v. Rushing, 17 Fla., 226.

824. (618-619.) Bonds of other county officers. — The county assessor of taxes, the county superintendent of public instruction, and the county surveyor of each county shall each give a bond in the sum of one thousand dollars. The county treasurer shall give a bond in a sum not exceeding the entire amount of county taxes levied for the year previous to the year in which he shall be commissioned, including special school and license taxes, and not less than one-half the amount of such taxes, to be fixed by the board of county commissioners; and such bond shall be taken and considered to cover and secure the moneys received by him as treasurer of the school fund or any other special taxes in his county. Ib., Sec. 7 and Ch. 3844, Acts 1889.

825. Duty of county commissioners. — The county commissioners of the various counties of the State of Florida shall at their regular meeting in January and June of each year examine carefully as to the sufficiency of bonds of the county officers of their respective counties, and if by reason of death, assignment or insolvency of any of the sureties on the bonds of said officers, they have reason to believe that the sufficiency of said bond has become impaired, they shall at once report the same to the Governor, who shall call upon and require such officer or officers to execute and file with the proper officer a new bond for the same amount, under the same conditions as his former bond. Ch. 4413, Acts 1895, Sec. 2.

826. Failure to give new bond, misfeasance.—Upon the failure of any State or county officer to give the new bond required by the preceding section, within sixty days after he Ib., Sec. 8.

is called upon to do so, such failure on the part of any county officer shall be deemed and held to be a misfeasance within the meaning of the Constitution; and it shall be the duty of the Governor to suspend such officer, as provided in Section 15 of Article 4 of the Constitution, and to at once appoint a successor to fill such vacancy, who after giving the bond required and otherwise qualifying, shall take charge of the office to which he has been appointed, and perform the duties of the same until his successor shall have been elected and qualified, or the officer suspended be reinstated; and in all cases where officers are liable to impeachment under the Constitution, the failure to give the bond as hereinbefore mentioned shall constitute a ground of impeachment.

Ib., Sec. 4.

827. Failure to perform duties. — If the Comptroller of the State of Florida, or the boards of county commissioners of the various counties, shall fail to perform the duties required by Sections 115 and 825 respectively, they shall be liable to the State or county for any loss which may be sustained by the State or county, by reason of such failure, such sum to be recovered by suit in any county in which such Comptroller or county commissioners may reside.

Ch. 3724, Acts —, Sec. 9.

828. (620.) Sums for which sureties may be bound.—In every bond in which the amount of the bond shall not exceed one thousand dollars, there shall be at least two sureties, each bound for the full amount of the bond; in every bond so specified in which the amount of the bond shall exceed one thousand dollars, each surety may bind himself for a specified sum, and the aggregate amount for which the sureties shall bind themselves shall not be less than the penalty of the bond.

Ib., Sec. 10.

829. (621.) Justification and approval of bonds.—Each surety upon every bond of any county officer shall make affidavit that he is a resident of the county for which the officer is to be commissioned, and that he has sufficient visible property therein unincumbered and not exempt from sale under legal process to make good his bond. Every such bond shall be approved by the board of county commissioners and by the Comptroller when they and he are satisfied in their judgment that the same is legal, sufficient and proper to be approved.

830. The provisions of this chapter requiring two sureties and justification by surety shall not apply where such surety is a surety company authorized to do business in this State.

CHAPTER VI.

COUNTY SITES.

831. (622.) Election to change county site.—The registered voters in any county in this State wishing to change the location of their county site, shall present to the board of county commissioners of such county a petition signed by one-third of the registered voters praying for a change of the location of such county site. Ch. 1890, Acts 1872, Sec. 1.

832. (623.) Commissioners to order election. — The county commissioners of any county in this State upon receiving such petition as specified in the above section shall order an election at the several precincts in such county for the location of such county site, giving at least thirty days' notice thereof. Ib., Sec. 2.

833. (624.) Elections and returns. — All the elections held under the provisions of this law shall be conducted in the usual manner prescribed by law for holding general elections in this State, except as in this chapter otherwise provided, and the returns of such elections shall be made to the county commissioners, or to the clerk thereof. Ib., Sec. 3.

834. (625.) Canvass and result of election.—The county commissioners shall on the fifth day after said election, ordered as aforesaid, publicly canvass the same, and the place receiving a majority of the number of votes cast at such election shall be the county site of said county for ten years; and it shall be the duty of said commissioners to erect as soon as possible a court house and jail, and to provide suitable offices for all of the county officers, who are required by law to keep their offices at the court house, at the place so selected as the county site aforesaid. Ch. 3301, Acts 1881.

Sauls et al. v. Freeman et al., 24 Fla., 209, 4 So. Rep., 525; Douglass et al. v. Commissioners of Baker County, 23 Fla., 419, 2 So. Rep., 776; State ex rel. v. Comrs. Baker County, 22 Fla., 29; State ex rel, v. Comrs. Sumter County, 19 Fla., 518; Lanier et al. v. Padgett et al., 18 Fla., 843.

CHAPTER VII.

ROADS AND BRIDGES.

835. Powers of county commissioners.—The county commissioners of this State are hereby invested with the general superintendence of the public roads within their respective Ch. 4338, Acts 1895, Sec. 1.

counties, and may establish new, change and discontinue old roads, and keep the same in good repair in the manner herein provided.

Ib., Sec. 2.

836. Duty of county commissioners.—It shall be the duty of the county commissioners to establish the width and grade of the public roads, causeways and bridges in their respective counties.

Ib., Sec. 3.

837. Petition for road.—No public road can be established, changed or discontinued except on application to the county commissioners. Such application shall be made by petition duly signed by citizens, free-holders living in the vicinity of the road sought to be established or changed.

Ib., Sec. 4.

838. Establishing new, or changing old road, procedure. When a new road is to be established, or an old road changed, the county commissioners shall issue an order to three disinterested free-holders in the county to view and mark out the best route for the said proposed road, and they shall subscribe to an oath to perform their duties faithfully: Provided, Such persons shall not receive any compensation for said services. After the route is marked out and their report is accepted by the county commissioners, the county commissioners shall make an order for the opening of said new road or changed road after giving thirty days' notice thereof, by posting at the court house and at some public place nearest the road sought to be changed or established; and if the road so laid out shall pass through the lands of any persons who shall object to or consider themselves aggrieved by the same, and the board of county commissioners and the persons aggrieved cannot agree upon a reasonable compensation to be paid out of the county treasury to such aggrieved person or persons by order of the board of county commissioners, then and in that event the chairman of the board shall file a petition to the circuit court of the county, addressed to the judge thereof, praying for the appointment by such circuit judge of a jury of twelve men, who shall be free-holders, registered voters and residents in the vicinity of said road, to assess the damages that may be done to the person or persons aggrieved whose land is sought to be taken. Such petition shall describe as accurately as may be practicable the property desired to be taken and shall give the name or names of the owner or owners thereof or of the person or persons in possession thereof and the purposes for which said land is taken. After such petition shall have been filed, the course of procedure shall be the same as that set forth in Sections 2011-2021 and it shall be the duty of the county commissioners to order

the damages assessed to be paid out of the county treasury, if the same be a public road, together with all costs of the proceedings; and all new roads laid out and established, shall be run as near as may be upon section lines and subdivisions thereof.

839. May use necessary material.—The board of county commissioners of the several counties of this State in the construction of roads and highways shall have the right and power to appropriate and use any material which may be necessary to the proper construction, maintenance and repairing of the roads and highways in their several counties; but before using such material, they shall endeavor to purchase or obtain the same from the respective owners thereof. But should the county commissioners and owners of the material or land be unable to agree on the price to be paid, then the board of county commissioners shall have the right to proceed to condemn the land upon which such material is located, and have damages awarded to the owner thereof, in the same manner as is now provided, or may hereafter be provided by law, for the condemnation of lands for roads and highways and other public purposes. Ch. 5230, Acts 1903, Sec. 1.

(See Ch. 5439 and Ch. 5440, Appendix).

840. Road districts.—Each county commissioner's district in the several counties shall constitute a road district. Ch. 4338, Acts 1895, Sec. 5.

841. Road commissioners.—It shall be the duty of the county commissioners in each county, at their first meeting in January of each and every year, or as soon thereafter as practicable, to appoint three fit and proper persons in each road district as commissioners for roads and bridges within their respective districts, who before they enter upon their duty as such shall take and subscribe an oath faithfully to discharge their duty as road commissioners, and file the same with the clerk of the board of county commissioners. Ib., Sec. 6.

842. Duties of commissioners.—Said road commissioners as soon as they are appointed and qualified shall lay off the roads in their respective districts into sub-divisions of convenient length and size and apportion the hands liable to work upon the public roads, and appoint a fit and proper person subject to work upon the public roads as overseer of and for each road sub-division, and furnish such overseer with a list of all the hands liable to work roads in his subdivision. Ib., Sec. 7.

843. Term of service. Compensation.—All the road commissioners so appointed as aforesaid, shall serve for one year or until their successors are appointed and qualified, and Ch. 4771, Acts 1899, Sec. 1.

shall be paid by the county commissioners out of the general revenue funds for their service as such road commissioners, the sum of twelve dollars each per annum; and all road overseers so appointed as aforesaid shall serve for one year or until their successors are appointed and qualified, and they shall be exempt from any other road duty during the time that they are serving and for one year thereafter, and shall receive no other compensation for their services; and every overseer so appointed who shall refuse or neglect to perform his duties as directed in this chapter shall forfeit and pay ten dollars ($10.00), to be collected as hereinafter provided.

Ch. 4338, Acts 1895, Sec. 10.

844. Duty of overseer.—The road overseer of the several sub-divisions shall summon in writing or in person, at such time and in such numbers as he may deem advisable, all persons liable to road duty and who have been appointed to his division, giving at least three days' notice except in case of storms and casualties, when one day's notice is sufficient, of the time and place at which such person shall be required to work and the tools with which he must supply himself; and such notice if in writing may be served by leaving it with a member of the family over twelve years of age at his place of residence: Provided, That no person shall be required to work on the public roads beyond the limits of the road district in which he resides.

Ib., Sec. 10.

Ib., Secs. 11 and 12.

845. Who subject to road duty.—Every able-bodied male person over the age of eighteen years and under the age of forty-five years, resident in any county in this State for thirty days, shall be subject and liable to work on the roads and bridges in such county for not more than eight days in each year: Provided, That such person so subject to road duty may perform such service by an able-bodied substitute over the age of sixteen, or in lieu thereof may pay to the road overseer the sum of one dollar ($1) for each day he is required to work, taking his receipt for the same, and said overseer may expend any money so paid to him in repairing or having any work done that he may deem proper on his sub-division of the road, and make a report of the same to the supervisors in his road district in writing. No person shall be compelled to work the road more than three days in any one week except in case of storms and casualty: Provided, further, That no person residing in any incorporated town or city and paying municipal taxes shall be required to work on the public roads under this section.

Ib., Sec. 13.

846. County commissioners to contract for building bridges.—The county commissioners shall when necessary to build or repair any bridge or causeway in their respective

counties let out the same by contract, and shall pay for the same out of the county building fund, but no county commissioner shall contract to do any such building of bridges or causeways.

847. Exemptions.—All maimed and disabled persons who shall procure certificates of such disability from some licensed practicing physician, persons of unsound mind, and ministers in charge of a church shall be exempt from road duty under this chapter. Ib., Sec. 15.

848. Sign boards.—Each road overseer is required to put up sign boards at every important fork or crossing of the public road in his sub-division, and shall cause mile posts to be erected on all public roads in his sub-division, and he shall receive such compensation therefor as the county commissioners shall determine to be reasonable and just, to be paid from the building fund in the county treasury. The road overseer is hereby authorized to commute personal labor for horses and mules, wagons or teams, or any necessary implements furnished by any person for the operating, working or repairing of the public roads and bridges. Ib., Sec. 16.

849. Road commissioners to keep record. — The road commissioners of each road district shall have a book in which they shall correctly enter all lists furnished to the overseers of the several roads, or sub-divisions in their road district, and a list of all defaulters delivered to them by each overseer, and also their own proceedings while acting as a board of road commissioners, which shall be transferred and delivered to their successors. The said book shall be furnished them by the board of county commissioners upon requisition made by them upon said board of county commissioners. Ib., Sec. 18.

850. Special tax for roads and bridges.—In any county in this State where the board of county commissioners may deem it advisable and for the public good, they shall at the time for levying county taxes for county purposes, levy a special tax for public roads, bridges and river crossings, not to exceed five mills on the dollar on all real and personal property in the county subject to taxation, which tax shall be assessed and collected as other taxes of the county; and the money arising therefrom shall be paid into the county treasury as a special fund to be expended under the direction of the county commissioners solely for the purpose of maintaining, working, repairing and keeping in good condition the public roads, bridges and river crossings of the county, and purchasing suitable tools, implements and materials, Ch. 5237, Acts 1903, Sec. 1, amending Sec. 20, Ch. 4338, Acts 1895, and consolidated with Sec. 1, Ch. 4769, Acts 1899.

teams, wagons, camp outfits and stockades for the use and safe keeping of the convict force as may be found necessary in the proper carrying out of this work, and for the employment of such additional labor as may be deemed necessary: Provided, however, That one-half of the amount realized for said special tax on property in incorporated cities and towns shall be turned over to the municipal authorities of said cities or towns to be used in the repairing, working and improving and laying out of the streets thereof as may be prescribed by the ordinances of said cities and towns: Provided, further, That each board of county commissioners before levying such tax give sixty days' notice in at least one or two newspapers published in such county of their intention to levy such tax: Provided, That nothing is implied in this chapter to prevent any county in this State from working roads as the law now directs: Provided, further, That nothing contained herein shall prevent any county issuing bonds for road purposes as is or may be provided by law.

No board of county commissioners shall levy tax as prescribed in this chapter if a majority of the registered voters of said county by petition shall oppose said tax levy.

Ch. 4338, Acts 1895, Sec. 21.

851. County commissioners to advertise for bids, employ labor.—The county commissioners, after they have levied the tax provided in the preceding section, shall proceed to advertise, for at least thirty days, for bids, for some suitable person to oversee, repair and work for one year the public roads and bridges of their respective counties, whose salary shall not exceed one dollar and fifty cents per day for actual service while carrying out the provisions of his overseership, requiring of the overseer or bidder a bond in favor of and payable to the county commissioners, for the faithful performance of his duties, with approved security; and such work shall be under the immediate supervision of the county commissioner as superintendent of roads in the district. Each county commissioner of his respective district may employ or authorize the overseer under him to employ the necessary labor to work his respective roads, and shall not pay exceeding ten cents (10) per hour to any laborer, and shall keep an itemized account of the name of each laborer, the time of, and the price to be paid each, placing a certified copy of the same with the clerk of the board of county commissioners on the first Monday in each month; said overseer shall give to each laborer a certificate of his time, stating number of hours labored each day, at the end of each week, if so required, and such certificate shall become an order on the board of county commissioners, and shall be paid upon the report of same by the county commissioner as road superintendent of the district where such labor is

performed: Provided, That no overseer shall work with less than six (6) men unless in case of accident, the falling of a tree, the breaking of a bridge, he may be allowed to work with a less number.

852. Road superintendent.—There may be appointed by the board of county commissioners at their regular meeting in September of each year, a county road superintendent, who shall receive a salary of not over two dollars per diem for each day he is actually engaged in the discharge of his duties, same to be paid out of the road fund by the county commissioners: Provided, That the said superintendent of roads may at any time be removed from office by the board of county commissioners for good and sufficient cause, after having been given due notice and hearing. It shall be the duty of said superintendent of roads to supervise, direct and have charge of the maintenance and building of all public roads, culverts and bridges in the county, and he shall submit to the board of county commissioners an itemized monthly report of all work done and in progress and money expended. Said county road superintendent, before entering upon the duties of his office, shall deposit with the county commissioners a good and lawful bond for the sum of five hundred dollars as a guarantee of the faithful discharge of his duties. In case of the death, resignation or removal of said superintendent it shall be the duty of the county commissioners to elect at their first meeting thereafter a road superintendent, who shall hold office till the regular meeting in September. Ib., Sec. 2.

853. Guards for convicts.—Subject to the approval of the county commissioners, the road superintendent shall appoint, with power at any time to remove or discontinue, such guards as may be needed to take charge of the convict force. Such guards shall not receive over one dollar and fifty cents per diem for every day they are actually engaged in guarding the convicts, same to be paid by the county commissioners out of the road fund, as hereinbefore provided for. Ib., Sec. 3.

(For working county convicts on public roads: See Sections 4110-4113.)

854. Superintendent may change road.—Subject to the approval of the county commissioners, the superintendent of roads is hereby given power to re-locate or change any part of the public road where, in his judgment, such re-location or change will prove advantageous to public travel: Provided, however, That any such change or re-location shall be subject to the same proceedings as control the original establishment or location of a public road. Ib., Sec. 7.

Ch. 5236, Acts 1903, Sec. 1.

855. Exemption of payers of road tax from road duty.—In any county in this State where the county commissioners shall decide to levy a tax for the purpose of keeping in repair the public roads and bridges, as provided for in Section 850, no person residing in said county who pays the road tax in said county shall be required to work the roads and bridges in said county, but shall be exempt from road duty where said commissioners shall levy a tax of more than one mill for the purpose of keeping in repair and working the roads and bridges in said county: Provided, That every able-bodied male person over the age of eighteen years, and under the age of forty-five years who does not pay a tax for the purpose of keeping in repair the public roads and bridges of said county shall be subject to and liable to work on the public roads and bridges of said county for not more than eight days in each year.

Ch. 4936, Acts 1901, Sec. 1.

856. Acts of county commissioners ratified.—All acts of the county commissioners of the several counties of the State of Florida, relative to the laying out, grading, constructing, building, paving and making contracts in relation to the same, of paved, macadamized or rock public roads, highways, and boulevards in the counties of this State, be and the same are hereby ratified, confirmed and approved of in all respects.

Ch. 4594, Acts 1897, Sec. 1.

857. Gates across roads permitted.—The boards of county commissioners of the several counties of this State are hereby authorized to permit the construction of gates across the public roads of their respective counties whenever in their opinion, the same will not unnecessarily interfere with the public travel.

Ib., Sec. 2.

858. Place and construction of gate regulated by county commissioners.—The county commissioners shall prescribe the place where such gate shall be placed and the manner of its construction and maintenance.

Ib., Sec. 3.

859. Commissioners may rescind permit for gate.—Said boards of county commissioners may rescind any such permit whenever they shall deem it necessary for the public good: Provided, That at least thirty days' previous notice shall be given the party or parties to whom such permit shall have been granted before the same shall be rescinded.

CHAPTER VIII.

OWNERS OF LOG CARTS AND TURPENTINE WAGONS USING PUBLIC ROADS MUST KEEP THEM IN REPAIR.

860. Operators of turpentine carts on public roads to repair the same.—Any person that shall run or operate a log, timber or turpentine cart, or wagon, on or over any public roads in this State, and any person habitually hauling heavy loads of any kind on or over such roads, shall keep the portion of such roads used by them in as good condition and repair as the portion of the said road, or public roads in their vicinity, not used by them, are kept. Ch. 4946, Acts 1901, Sec. 1.

861. Overseer to make complaint.—It is hereby made the duty of the road superintendent, supervisor, or overseer, in charge of such public road or roads, to see that the provisions of this chapter are complied with, and to make complaint against any person or persons who may violate the same; and in all prosecutions evidence that the damaged road was usually used and worked as a public highway shall be prima facie evidence that the same was a public road within the meaning of this chapter. Ib., Sec. 3.

862. Liability of such user for damages. — Any person violating the provisions of this chapter shall be liable in civil action for all damages caused to such public road, and the cost of repairing the same, which amount, together with a reasonable attorney's fee, may be recovered by suit in a court of competent jurisdiction by the board of county commissioners for the use and benefit of the county in which such road may be located, and any recovery shall be paid into the county road fund. Ib., Sec. 4.

CHAPTER IX.

SHADE TREES ALONG PUBLIC ROADS AND HIGHWAYS.

863. County commissioners' power to shade and improve public roads.—The county commissioners in the State of Florida, in addition to powers now vested in them in regard to the public roads and bridges, are hereby invested with the further powers of improving and shading the public roads and highways in their respective counties. Ch. 4958, Acts 1901, Sec. 1.

Ib., Sec. 2.

864. Duty of county commissioners.—It shall be the duty of the several boards of county commissioners of the respective counties of this State, whenever a majority of the free holders residing or owning real estate along and in the vicinity of any public road or highway shall present to them a petition asking that said public road or highway be improved by planting suitable shade trees along such road or highway, or such part thereof as may be desired or designated in said petition, to grant such petition and to have suitable shade trees planted in regular order as hereinafter provided, the work to be done at the proper season and according to the prayer of the petition.

Ib., Sec. 3.

865. Ibid.—It shall be the duty of the board of county commissioners when it shall have been desired and granted by petition, to set shade trees on any of the public roads or highways or any part thereof, to have suitable shade trees planted at the proper season at a distance of one-eighth of a mile apart along such highway, taking care to have such trees planted fifteen feet back from the center of the road on each side in two parallel lines. Such shade trees shall not be less than three nor more than six inches in diameter, six inches from the ground, and shall not be less than ten feet high. Such trees so planted by and under the direction of the board of county commissioners shall stand as markers to guide the setting of the remaining trees required to properly shade said highway.

Ib., Sec. 4.

866. Planting trees.—When a petition has been granted by any of the several boards of county commissioners to plant shade trees on any designated public road or highway, and the board of county commissioners shall have planted in the proper season shade trees as markers and guides, as provided for in the foregoing sections, said commissioners shall purchase suitable shade trees and cause them by contract to be planted in proper season by the persons from whom such trees are purchased. Said trees shall not be less than three (3) inches nor more than six (6) inches in diameter, and not less than ten feet high. The trees shall be planted in two parallel lines fifteen feet back from the center of the road and lined upon the markers, and shall be planted at a distance of not less than ninety (90) nor more than one hundred and ten (110) feet apart as near as may be, the trees to be planted in each row so as to alternate in space, so as not to stand opposite each other in the row. The trees so purchased and planted shall not be paid for until said trees have put on a sufficient amount of growth to insure their continued life and healthy growth: Provided, further, That not more than twenty-five cents (25c.) shall be paid

for each such healthy and growing tree. It is further provided that the trees purchased shall be from free-holders, together with other citizen tax payers, and that not more than ten dollars worth shall be paid to any one furnishing and planting trees on the highways in any one year.

867. Costs and expenses.—The costs and expenses accruing to any of the respective counties by reason of such improvement of their public roads and highways by planting shade trees along said roadways shall be paid in the usual way prescribed by law out of the road tax fund by order of the board of county commissioners. Ib., Sec. 5.

868. Work done under supervision of commissioners.—The work contemplated to be done in this chapter shall be done under the supervision of the commissioners of the respective counties of the State and the road officials now or hereafter to be constituted under existing laws and amendments thereto. Ib., Sec. 6.

CHAPTER X.

COUNTY HARD ROADS.

869. I. I. Fund money for roads.—All moneys now in the Internal Improvement Fund, after the payment of all legal obligations against the said moneys, shall be placed by the Trustees of the Internal Improvement Fund with the State Treasurer, who shall thereupon place the same to the credit of the several counties of the State according to the assessed valuation of the property in the several counties at the time of the transfer, for the purpose of constructing hard roads in such county. Ch. 5245, Acts 1903, Sec. 1.

870. I. I. Fund lands to be sold and proceeds applied to road fund.—All lands granted to the State of Florida, by the United States under the act of Congress of 1850, known as the "Swamp Overflowed Act" for internal improvement, shall be sold by the Trustees of the Internal Improvement Fund at such times and under such conditions as said trustees may determine; the proceeds therefrom shall be by them deposited with the State Treasurer, and by him placed to the credit of the said county road fund, as provided in the foregoing section: Provided, That nothing herein shall be so construed as to prevent the payment in lands by the said Ib., Sec. 2.

Trustees of the Internal Improvement Fund of all legal obligations now existing against said fund.

Ib., Sec. 3.

871. Money appropriated paid to county treasurers upon requisition of county commissioners.—All moneys appropriated to the several counties as provided by the preceding sections shall be paid to the treasurer of each county upon requisition by the county commissioners of said county, conditioned upon its being used exclusively for the building and constructing a system of hard, macadamized or other hard-surfaced roads; said requisition shall be accompanied by certificate under seal of the clerk of the circuit court that the county commissioners make such application solely for the purpose of building hard, macadamized or other hard surfaced roads.

CHAPTER XI.

DIVISION OF COUNTIES INTO ROAD DISTRICTS.

Ch. 5239, Acts 1903, Sec. 1.

872. Road districts.—Each county shall constitute a road unit; all sub-divisions of a county for road purposes shall be designated as road districts; all road districts levying a road district tax shall hereafter be designated as special tax road districts.

Ib., Sec. 2.

873. Duty of board of county commissioners.—It shall be the duty of the board of county commissioners of any county to order an election to be held in any road district whenever one-fourth of the qualified electors who pay a tax on personal or real property and are resident in such road district, shall petition for such election, to determine whether said road district shall become a special tax road district for the purpose of levying and collecting a district road tax for the exclusive use of the public roads within such road district; such election shall be ordered and held on a day not earlier than thirty days nor later than sixty days from the day of presentation of such petition to the board of county commissioners in regular session, and the election shall be held at the regular polling places within such road district. At such election the following matters shall be determined by a majority of the ballots cast by electors qualified as herein prescribed, except that the three persons receiving the highest number of votes at such election shall be declared road trustees of said district: First, whether the road district

shall become a special tax road district; Second, who shall be the road trustees of the said district; Third, the number of mills of district tax to be levied and collected annually for the two succeeding years. It is herein provided, that in no year shall more than five mills be levied and collected within any special tax road district, for the exclusive use of the public roads within such road district. The three persons receiving the largest number of votes cast shall be declared the trustees elected for the special tax road district: Provided, A majority of all the votes cast be in favor of creating such special tax road district; who shall serve for the next ensuing two years, and perform the duties hereinafter prescribed.

874. To continue until dis-established.—Special tax road districts created under this chapter shall continue until dis-established or changed by like proceedings as those by which they were created. Ib., Sec. 3.

875. Notice of election to be published.—It shall be the duty of the board of county commissioners of the county to cause a notice of said election to be published once a week for four successive weeks prior thereto in a newspaper published in the county, and having a general circulation throughout the county; and if no newspaper be published in such county, then it shall cause five written or printed notices of said election to be posted in five public places within the said road district. It shall be the duty of the board of county commissioners to appoint inspectors and clerks for said election, whose duties shall be the same as similar officers in general elections, except as herein stated. Ib., Sec. 4.

876. Commissioners to canvass returns.—The board of county commissioners shall canvass the returns of election as made to it by the inspectors and clerks of election, at the next regular meeting of said board, or at a special meeting called for that purpose, and declare the results of election at that meeting. Ib., Sec. 5.

877. Election governed by general election laws. — All special tax road district elections shall be held and conducted in the manner prescribed by law for holding general elections, except as provided in this chapter, and it is hereby made the duty of the supervisor of registration of any county to furnish, upon payment for said service, to the board of county commissioners on demand, a certified list of the qualified voters residing within the special tax road district who have paid a tax on real and personal property for the year next preceding any such special tax election. Ib., Sec. 6.

Ib., Sec. 7.

878. Qualifications of electors.—All qualified voters residing within the road district sought to be made a special tax road district who pay a tax on real or personal property, shall be entitled to vote in said election, and a majority of the votes cast shall determine any matter voted upon pertaining to a special tax road district, except that a plurality of the votes shall determine the selection of road trustees. The cost of the publication of the said notice of such election, and of the election itself shall be paid by the board of county commissioners out of the first money collected from the special tax districts.

Ib., Sec. 8.

879. Elections held bi-ennially.—Elections shall be held bi-ennially in each special tax road district, as near as practicable upon the anniversary of the original election, under the direction of the board of county commissioners to determine who shall be trustees for the succeeding two years, and the number of mills of district road tax to be levied and collected for each of said years; said election shall be held under the same rules and regulations, and qualifications of electors shall be the same as prescribed for those voting in the original election creating a special tax road district.

880. Trustees to have supervision of all roads.—Whenever a special tax road district is created and trustees are elected, they shall have the supervision of all the public roads within said district. The powers of trustees shall not be those of control, but of supervision only, and shall extend to all the public roads within the special tax road district.

Ib., Sec. 9.

Any trustee failing to discharge the duties of the position shall be removed after due notice to said trustee, by the board of county commissioners, and all vacancies occurring in the board of trustees, from any cause, shall be filled for the unexpired term by the board of county commissioners by the appointment of a trustee or trustees from among the residents of such special tax road district possessing the qualifications of an elector of any election held under this chapter.

Ib., Sec. 10.

881. To be under direction of board of county commissioners.—All public roads within a special tax road district shall be under the direction and control of the board of county commissioners as in other districts, and subject to the same laws, rules and regulations prescribed for the construction, maintenance and repair of other public roads.

Ib., Sec. 11.

882. Duty of trustees.—It shall be the duty of these trustees, on or before the 1st day of June in each year, to prepare an itemized estimate, showing the amount of money necessary and likely to be raised for the next ensuing fiscal

year, and to certify therein the rate of millage voted to be assessed and collected upon the taxable property within the special tax road district for that year. It shall also state the number of miles of railroad track and telegraph lines within the territorial limits of the special tax road district. This itemized estimate shall be made in duplicate, one copy to be filed with the clerk of the board of county commissioners and one copy with the Comptroller of the State. It shall be the duty of the board of county commissioners to order the assessor to assess and the collector to collect the amount legally assessed upon the property of the special tax road district, at rate of millage designated by the board of trustees, and pay the same to the county treasurer; it shall be the duty of the Comptroller of the State to assess all of the railroads and railroad property, together with the telegraph lines and telegraph property situated within such special tax road district, and to collect the taxes thereon in the same manner as required by law to assess and collect said taxes for State and county purposes, and to remit the same to the treasurers of the counties, to be by them held to the credit of each special tax road district fund, and to be paid out as hereinafter provided. The county treasurer shall be liable for all special tax road funds upon his official bond, after receiving said funds, as in the case of other county revenues. All special funds collected within a special tax road district shall be disbursed solely for road purposes within the district in which collected, and as near as practicable, in the year in which the tax is collected, upon the recommendation of the board of trustees: Provided, That the trustees shall make no contract with any one of its members embracing any monetary consideration.

883. Trustees a corporation.—The trustees of any special tax road district shall be a corporation, and may hold property, sue and be sued, and perform other corporate functions: Provided, That no debt shall be created without the approval of the board of county commissioners. Ib., Sec. 12.

884. Ballot.—Each voter voting at any election under this chapter shall vote but one ballot at any one election, and the same shall be written or printed in black ink on plain white paper, and shall be substantially of the following form, according as the elector may desire to vote upon any or all of the questions submitted: Ib., Sec. 13.

For (or against) Special Tax Road District.....
Road Trustees (stating their names).....
.....
.....
Maximum Tax Levy..... Mills.....

CHAPTER XII.

BICYCLE SIDE PATHS.

Ch. 5240, Acts 1903, Sec. 1.

885. Board of side path commissioners.—The Governor may, upon the petition of fifty resident wheelmen of any county, appoint four persons from the resident citizens who are cyclists, giving each city and one or more towns in such county a representation on the board as near as possible in proportion to the probable number of cyclists resident in such localities, who shall constitute a board of side path commissioners for such county. The term of such commissioners shall be for four years.

Ibid.

886. When vacancy occurs.—Whenever a vacancy shall occur by expiration of the term of office, or otherwise, the chairman or secretary of the board shall immediately file a notice with the Governor, specifying the name of such commissioner and the city or town in which he resided and the time for which his successor shall be appointed. Upon receipt of such notice the Governor shall appoint some person to fill such vacancy and file such appointment with the county clerk. The county clerk shall forthwith notify such person of his appointment, and he shall immediately upon filing his acceptance thereof with the county clerk, and taking the constitutional oath, enter upon the duties of the office.

Ibid.

887. Removal of commissioner. Bond. — In case of charges being made against any such commissioner in writing, and filed with the Governor, said Governor shall notify the commissioner to appear and answer such charges, and may remove such commissioner if good cause be shown. Such commissioners shall receive ten per cent. (10 p. c.) of all money received by them for the sale of license tags, and the sum of one dollar and fifty cents ($1.50) per day for each day spent in actual work in constructing or repairing side paths, and shall be paid their actual and necessary disbursements, all of said payments to be made from amounts collected by them. Said commissioners shall give a bond in the sum of five hundred dollars, with two sureties, payable to the Governor of the State for the faithful performance of their duties, which bond shall be approved by the board of county commissioners of the respective counties.

Ibid.

888. Police powers of commissioners.—Said side path commissioners shall have and are hereby granted the same police powers as deputy sheriffs in the execution of the pro-

visions of this chapter, and shall wear a badge designating their office.

889. Powers of commissioners.—Such board of side path commissioners is hereby authorized and empowered to construct and maintain side paths along any public road or street or section thereof in the county: Provided, That said board of side path commissioners shall be required to obtain the written approval of the board of county commissioners, and file in the office of the county judge before commencing the building of any side path outside the incorporate limits of any incorporated city or town in said county; and Provided, They shall procure the approval of the common council of any city or town by a resolution at a meeting thereof before constructing any side path in such corporation. Such side path shall not be less than two nor more than six (6) feet wide, and constructed on outside lines along or on either side of such public road or street. Ch. 4948, Acts 1901, Sec. 2.

890. License badge.—Such board of side path commissioners shall at their first meeting and in each succeeding calendar year, adopt a form of license badge, emblem or device, suitable to be affixed to a bicycle, to be known as a "Bicycle Side Path License." The term "Bicycle" shall be construed to mean and apply to any bicycle, tandem bicycle, tricycle, motorcycle and wheel chairs, for the purposes of this chapter. Any license properly attached to the left fork of a bicycle shall entitle the rider or owner thereof to the use of all side paths in the State of Florida during the year for which said license was issued. Ch. 5240, Acts 1903, Sec. 2.

891. Who entitled to license.—Any person by payment of not less than fifty cents (50c), nor more than one dollar ($1.00) shall be entitled to receive such license, which shall hold good during the calendar year for which it was issued and no longer. Ibid.

892. When license valid.—Every such license to be valid must be issued by the side path commissioners of the county wherein the bicyclist resides, except that any cyclist who resides in another State or in a county where no side path commissioners have been appointed may secure a license in any county where such commissioners have been legally appointed; and such license shall be held valid for the term for which issued and no longer. No person shall ride a bicycle on any side path in this State where a side path commission has been, or at any time hereafter shall be appointed, unless a valid license is attached to the left side of such Ibid.

bicycle. No person shall counterfeit, or make, or sell, or give away, or have on his or her bicycle any license purporting to have been issued by any county or any persons in this State, unless regularly issued by the respective boards of side path commissioners pursuant to law. No license shall be valid unless attached to a bicycle as aforesaid; such license shall be plainly numbered, and not valid if mutilated or changed so as to deceive, or be calculated to deceive, and no person shall have a license attached to his bicycle which was issued for a prior year.

Ch. 5240, Sec. 3, Acts 1903.

893. Disposition of license fees.—The license fees collected by said board of side path commissioners shall be expended in the constructing, repairing and maintaining side paths in the districts where collected, all bids shall be sworn to, and each board of commissioners appointed under this chapter shall report annually to the county judge of their respective county, giving a detailed financial statement, and with such report shall file vouchers for each expenditure. Said reports and vouchers shall be finally deposited in the office of the county clerk.

Ch. 4948, Acts 1901, Sec. 6.

894. No stock allowed on bicycle path.—No person shall wilfully lead, stand, hitch, ride or drive any horse, cattle, sheep, swine or other animals upon any bicycle side path now constructed, or to be hereafter constructed in this State under this chapter, except for the purposes of access or egress from lands abutting on the highway.

Ib., Sec. 7.

895. Not to obstruct bicycle path.—No person shall wilfully obstruct, injure or destroy any portion of any such side path now constructed or to be constructed hereafter in this State.

Ib., Sec. 8.

896. Board of side path commissioners to have direction of same.—The side paths heretofore constructed, and hereafter to be constructed in this State under this chapter are hereby placed under the direction and control of the boards of side path commissioners of the various counties in which they are located.

Ib., Sec. 10.

897. Courts having jurisdiction to try violators of this chapter.—Courts having jurisdiction to try misdemeanors, as provided by law, shall have exclusive jurisdiction to try all offenders under this chapter in the same manner as in other cases where they now have jurisdiction, subject to the same power of removal and appeal, and to render and enforce judgment to the extent herein provided.

CHAPTER XIII.

PROTECTION OF GROVES, ORCHARDS AND VINEYARDS.

898. Board of commissioners.—The board of county commissioners of the several counties of the State of Florida are hereby authorized and empowered, upon the filing of a petition signed by a majority of the fruit growers of such county asking for the same, to create a board of commissioners for the protection of the fruit trees and vines, of the groves, orchards and vineyards within the State of Florida from the ravages of injurious insects and fungous growth. Ch. 4959, Acts 1901, Sec. 1.

899. Body corporate.—The said board of commissioners when so created and organized is hereby declared a body corporate by the name of the board of commissioners for the protection of trees. orchards and vineyards of..... .....county, Florida. Ib., Sec. 2.

900. Powers of commissioners.—The said board of commissioners for the protection of the groves, orchards and vineyards of.....county, Florida, by that name and as a body corporate, shall be capable in law to purchase, receive, retain, use and enjoy to them and their successors and assigns, lands and tenements, goods and chattels, necesary to the purpose of their incorporation, and the same to grant, sell, convey and dispose of, to sue and be sued, to plead and be impleaded, to have a common seal and to ordain, establish and enforce such laws and regulations as may be deemed necessary and expedient for the proper management of the affairs and government of said corporation. Ib., Sec. 3.

901. Petition.—The said petition to the board of county commissioners of.....county, Florida, when presented, shall be signed by a majority of the fruit growers of said county, shall be presented to the board of county commissioners at any regular meeting of said board, and shall then await for action until the next regular meeting of the said board of county commissioners. Ib., Sec. 4.

902. Number of board of commissioners.—The said board of commissioners for the protection of the orchards, groves and vineyards of.....county, Florida, shall be composed of not more than twenty persons nor less than ten, and all of whom shall be resident fruit growers of.....county, Florida, and se- Ib., Sec. 5.

lected as nearly as may be from the various locations of the county, special consideration being had by the board of county commissioners in creating the membership of said board for the protection of the groves, orchards and vineyards of.....county, Florida, as to their knowledge of entomology and the possession of special fitness for the duties of the said board.

Ib., Sec. 6.

903. Selection of board.—After the filing of the said petition signed by a majority of the fruit growers of the said county, the board of county commissioners before whom the said petition shall be filed, shall give notice for three successive weeks in some newspaper published in the county, of the time when the members of the said board for the protection of the groves, orchards and vineyards of .....county, Florida, will be selected, and in said notice inviting the co-operation of the fruit growers in selecting said members.

Ib., Sec. 7.

904. Powers of board.—The said board for the protection of the groves, orchards and vineyards shall have the general and exclusive supervision and control under the provisions of this chapter of all matters pertaining to the protection of the groves, orchards and vineyards from injurious insects and fungous disease, and as soon as the members have been selected shall elect a chairman and secretary, and at said organization or at such other time as may be specified, shall adopt rules, regulations, also a constitution and by-laws if deemed necessary.

Ib., Sec. 8.

905. Ibid.—The said board of commissioners for the protection of the groves, orchards and vineyards of..... .....county, Florida, is hereby fully empowered when so organized to formulate all of the necessary means for putting in force the purpose and object of their creation, and may adopt all necessary and summary means for the legal enforcement of the same.

Ib., Sec. 9.

906. Inspectors of groves.—If deemed necessary, the said board of commissioners for the protection of the orchards, groves and vineyards for..... county, Florida, may select one or more inspectors of groves, orchards and vineyards, who shall be known as a "tree to tree inspector," and whose special duties shall be at such seasons of the year as may be designated, to inspect the trees and vines of the orchards, groves and vineyards within his jurisdiction, and to make report of the same. It shall also

be the specified duty of said inspector or inspectors to inspect and quarantine all fruit trees, vines and other like material coming from other counties where there is any ground for suspicion, and to take such steps as may insure the fullest protection. A full and complete series of rules and regulations for the government of said inspectors and defining their authority and jurisdiction shall be adopted by the said board of commissioners for the protection of the groves, orchards and vineyards of..... county, Florida.

907. Expenses of board.—All pecuniary expenses incurred under the provisions of this chapter shall be based on the benefit derived by the individual fruit growers, the same to be ascertained and collected by such ways and means as may be provided by the board of commissioners for the protection of the orchards, groves and vineyards of..... .....county, Florida, and said expenses shall be a first lien on the property of the fruit grower benefited by reason of said expense: Provided, That any and all mortgages and liens duly recorded prior to the incurring of expenses against said individual fruit grower or growers shall have priority over said subsequent liability. Ib., Sec. 10.

908. Contingent expenses.—The said board for the protection of the groves, orchards and vineyards, are hereby specially authorized to create a contingent expense fund, as may be deemed necessary and for the purpose only of meeting the current expenses of the said board, which fund may be raised by individual assessments against the members of said board; and should any member of said board fail to pay said assessment or assessments made against him or them, then said assessment shall become a lien against the property of such defaulting member and the collection of the same enforced in such way as may be fixed by said board. Ib., Sec. 11.

909. Failure to pay tax levy.—Whenever the "tree to tree inspector" shall, under the direction and rules and regulations of the board for the protection of groves, orchards and vineyards incur any expense in the performance of any work or labor or the furnishing the material for the protection of the fruit trees from injurious insects and fungous disease, and shall fail to pay the same, the said board shall assess and levy a tax against the property of the fruit grower so benefited, and the said board is hereby fully empowered to enforce the collection of the same. Ib., Sec. 12.

CHAPTER XIV.

OF FERRIES, TOLL BRIDGES, DAMS AND LOG DITCHES.

Ch. 3300, Acts 1881, Sec. 1.

910. (637.) County commissioners may grant license.—The county commissioners of the several counties shall have power to grant leave to applicants, upon the condition hereinafter provided, to establish ferries, toll bridges, mills and dams, and log ditches, upon and across the rivers and streams of their respective counties, which license shall continue in force for a time to be specified therein by said board not exceeding ten years.

Ib., Sec. 2.

911. (638.) Notice of application.—Any person desiring the benefits of the preceding section shall advertise in a newspaper published in the county wherein the privilege is to be granted, or if there be no newspaper published in said county, in a newspaper published in the adjoining or near county thereto; and shall also post in three conspicuous places in said county his intention to apply to the county commissioners for leave, specifying the object of his application to the commissioners aforesaid, which application shall be in writing, particularly describing the river or stream, and locality thereupon, with the width thereof, and the depth of water where he shall desire to erect or establish a mill dam, bridge, ferry or log ditch as aforesaid.

Ch. 3039, Acts 1877, Sec. 3.

912. (639.) Owner of land to have preference for ferry or toll bridge.—No such license to establish a ferry or toll bridge shall be granted to any person other than the owner of the land through which the highway adjoining the ferry or toll bridge shall run, unless such owner shall consent thereto or shall neglect to apply for such license, after notice as aforesaid.

Ib., Sec. 2.

913. (640.) Commissioners may regulate.—The said board, when they shall grant any license to keep a ferry or toll bridge, shall order and direct the rates of ferriage or toll which the person licensed may charge, and may, from time to time thereafter during the continuance of such license, alter such rates, and they may also direct what and how many hours each day such person shall attend his ferry or bridge, which hours shall be at least from daylight till dark, and may direct how long persons desiring to be crossed may be detained.

Ib., Sec. 5.

914. (641.) Bond. — Every person applying for such license for a ferry or toll bridge, shall, before the same shall

be granted, give bond in a sum to be fixed by the county commissioners, not less than two hundred dollars, with such sufficient sureties as the board shall approve, conditioned to faithfully keep such bridge in good repair, or attend such ferry with such and so many safe and convenient boats, and so many men to work the same, together with such sufficient implements therefor, and to perform the duties of such ferry or toll bridge, during the several hours in each day and at such several rates as the said board shall from time to time order and direct, which bond shall be filed with the clerk of said board.

915. (642.) Certificate of license.—Whenever an application is granted, as aforesaid, the clerk of the board of county commissioners shall issue his certificate under seal, specifying the privileges therein granted, for which he shall receive the fees prescribed by law for like services. Ch. 3300, 1881, Sec. 1.

916. (643.) License on waters between counties.—Whenever the waters over which any toll bridge or ferry may be used shall divide two counties, a license obtained in either of the counties shall be sufficient to authorize the person obtaining the same to transport and pass persons, goods, wares, and merchandise and effects to and from either side of said waters: Provided, That the rate of toll be fixed by the county commissioners of each county.

917. (644.) Exemptions from toll.—The militia of the State when actually going or returning from musters, or other militia services, shall be exempt from paying toll at any of the ferries and bridges in this State. Clergymen and preachers of the gospel shall also be exempt from paying toll at said bridges and ferries. Ib., Secs. 13 and 14.

918. (645.) Vested rights not impaired.—Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this State. Ib., Sec. 10.

919. Duty of county commissioners to grant franchise.—The county commissioners of any county in this State, whenever it shall have been made to appear to them that the convenience of the public requires the maintenance of a ferry for teams and passengers operated on regular schedules at frequent intervals across any river between any two points on opposite sides of the river in the same county, shall have power, and it shall be their duty, by resolution to grant a leave, license and franchise for the establishment and main- Ch. 5185, Acts 1903, Sec. 1.

tenance and operation of such ferry by a grantee or grantees named in the resolution from a street or public road on one side of the river to a street or a public road on the other side of the river; which leave, license and franchise shall vest in and be enjoyed by the grantee or grantees and the heirs, successors, and assigns thereof for the terms and on the conditions as in this chapter provided. The word "grantee" as hereinafter used shall include the heirs, successors and assigns of the grantee and the word "franchise" shall include leave, license, and all rights and privileges pertaining to ferries.

Ib., Sec. 2

920. Condition under which franchise granted.—Such leave, licenese and franchise, for the maintenance and operation of such ferry, shall be given and granted by resolution upon the following terms and conditions:

First.—The grantee of such leave, license and franchise, shall before the taking effect of such leave, license and franchise, give to the county a good and sufficient bond in the sum of five thousand dollars, to be approved by the county commissioners, conditioned for the establishment, maintenance and operation of a ferry of character to meet the reasonable necessities of the public on regular schedule at such frequent intervals from each side of the river with a ferry boat suitable and safe for the transportation of passengers and teams during the hours and on the schedules as fixed by the provisions of the resolution of the board of county commissioners granting the franchise. The county commissioners shall in and by the resolution giving and granting such franchise fix the schedule to be observed and the rate to be charged for ferriage, and the character and capacity of boats, and make such other regulations as may to them appear to be reasonable, to be in force and effect until changed as hereinafter provided.

Second.—Such franchise, unless adjudged by the courts forfeited for failure to comply with the terms and conditions thereof, shall run and continue for the full term of and period of fifteen years, and thereafter until the county commissioners shall have terminated the said franchise in the manner herein provided. No leave, license or franchise shall be granted to any person or corporation for the operation of any ferry across such river from or to any point within one mile of either terminus of such ferry as fixed by the resolution granting the franchise, and no other ferry shall be established or maintained within one mile thereof; and no such leave, license or franchise shall be so given or granted as to impair or depreciate the value of any vested right or privilege of any person or corporation operating at the time of the passage of

this chapter, a ferry for the transportation of passengers and teams at frequent and regular intervals across a river under the provisions of any resolutions of a board of county commissioners, granted under the provisions of existing laws; and Provided, further, That any person or corporation, at the time of the passage of this chapter, operating a ferry for the transportation of passengers and vehicles on regular schedules at frequent intervals, under a resolution of a board of county commissioners, shall, until a franchise shall have been obtained by such person or corporation under this chapter, have the right to continue to operate such ferry under said resolution for the terms and on the conditions fixed in said resolution, with all the rights and privileges and subject also to all the provisions of this chapter, including the provisions for arbitration as to the changes of schedules, number of trips, character of the boats used, charges, etc.; and no leave, license or franchise shall, during the terms of such existing leave, license or franchise be granted to any other person or corporation for the operation of a ferry within one mile of either of the terminals of such ferry.

Third.—At the end of the third year after granting such leave, license or franchise, and at the end of each period of three years thereafter, the county commissioners and the grantee shall each have the right, by having given notice of the intention so to do thirty days prior to any such recurring period of three years, to have arbitrated with the other party in question or questions as to the reasonableness of any rate or rates allowed or charged, or as to the character and reasonableness or frequency of the service required or given, or as to any other matter or thing pertaining to the maintenance or operation of such ferry. For the arbitration of any such question or questions, the county commissioners shall name one arbitrator, and the grantee of the franchise shall name the other, and the two arbitrators shall, if possible, after investigation, decide the question or questions submitted to them, and render to the county commissioners and to the grantee a written decision signed by them. If the two arbitrators so named shall be unable to agree as to a proper decision on any question or questions, they shall mutually agree upon a third disinterested party, who shall investigate the contested question or questions, and the finding of two of the arbitrators shall then be a decision of the arbitrators. All parties shall be bound, and shall abide by and carry out for the ensuing three years the decision of the arbitrators. The county commissioners and the grantee of such franchise shall have the right at any time, without arbitration, to make by resolution of the county commissioners, approved by the grantee, any arrangement that they may deem mutually ad-

vantageous to all concerned affecting such ferry service, subject, however, to subsequent change by arbitration at the times and as herein provided.

Fourth.—The county commissioners of any county, wherein such ferry shall have been operated as herein provided, shall have the right to have submitted to the voters of the county, at the general election next preceding the expiration of the said term of fifteen years, the question as to whether or not the county commissioners shall purchase the property used and operate the ferry, and if the majority of the voters voting on the subject shall have voted for the purchase and operation of the ferry by the county, then the county commissioners and the grantee of the franchise shall each name an arbitrator, and the two arbitrators so named shall name a third, a disinterested person of high standing and integrity, and the three arbitrators, or two of them, if the three cannot agree, shall, after a thorough investigation, fix the amount to be paid by the county to the grantee; and the county commissioners shall thereupon pay to the grantee the amount fixed by the arbitrators, or a majority of them, and shall receive from the grantee a conveyance of all its property used for ferry purposes; and the county commissioners shall operate such ferry so long as its operation by them shall appear practicable, and the grantee of the franchise shall not thereafter, so long as the said ferry shall be operated by the county, operate any such ferry, and all rights of the grantee to operate such ferry shall, during the time of the operation thereof by the county, be withdrawn.

Should the electors of the county at such election fail to approve the purchase and operation of such ferry, or should the county commissioners for any reason fail to make such purchase, the grantee shall have the right to continue the operation of such ferry with all the rights hereby granted and subject to all of the provisions of this chapter as to arbitration of questions of service, charges, etc., for an additional term of ten years, and until the county shall, by vote of its electors, have determined to purchase and operate such ferry, and shall have paid to the grantee the amount fixed by arbitration in the manner above provided.

Ib., Sec. 2.

921. No person to maintain ferry unless authorized.—No person not authorized under the provisions of this chapter shall maintain any ferry for transporting persons or property for profit across any river from any point within one mile of a terminus of any ferry maintained under the provisions of this chapter to any point within one mile of such terminus.

Ib., Sec. 4.

CHAPTER XV.

DRAINAGE OF SWAMP AND OVERFLOWED LANDS.

922. Powers of board of county commissioners.—The board of county commissioners of any county in this State shall have power, when conducive to the public health, convenience or welfare, or where the same will be of public benefit or utility, to cause to be constructed, as hereinafter provided, any drain, ditch or water course within said county. Ch. 4178, Acts 1893, Sec. 1.

923. Petition and procedure.—Before the board of county commissioners shall establish any drain, ditch or water course, there shall be filed with the clerk of such county a petition, signed by two or more of the land owners whose lands will be liable to be affected by or assessed for the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus, and shall give a bond with good and sufficient sureties, payable to the State, to be approved by the clerk, conditioned to pay all of the expenses in case the board of county commissioners shall fail to establish said proposed ditch, drain or water course. Said board shall, at their next regular session, appoint three resident freeholders not interested in the construction of the proposed work, and not of kin to any parties interested therein, as viewers, to meet at a time and place specified by said board, preparatory to commencing their duties as hereinafter specified; and it shall be the duty of the clerk thereupon to issue to said viewers a certified copy of the petition and order of the board, who shall proceed, at the time set in said order, with a surveyor, who shall be a civil engineer, and shall make an accurate survey of the line of the said ditch, drain or water course from its source to its outlet; and they shall cause stakes to be set along said line, numbered progressively down stream, at each one hundred feet, and they shall make a computation of the total number of cubic yards of earth to be excavated or removed from said ditch, drain or water course, and an estimate of the total cost of construction of the whole work. And they shall set apart and apportion to each parcel of land and to each corporate road or railroad, and to the county when public highways are benefited, a share of said work, in proportion to the benefits that will result to each from such improvement, and give the location of each share, its length in feet, and the estimated number of cubic yards of earth to be removed therefrom, and the price per cubic yard, and the cost of construction of each share or allotment separately, and specify the manner in which the work shall be Ib., Sec. 2.

done; and they shall accurately describe, as the same is described on the county tax books, each parcel of land to be assessed for the construction of said ditch, giving the number of acres in each tract assessed and the estimated number of acres benefited, the amount that each tract will be benefited by the construction of said work, and the amount that each tract is assessed for. And they shall also ascertain and give the names of the owners of the lands that are assessed for the construction of said work, as far as they can be ascertained by reasonable inquiry and search of the public records, and report also if said ditch or drain will be of public utility: Provided, That no pond, lake or tract of overflowed land containing less than three acres shall come under the provisions of this chapter.

Ib., Sec. 3.

924. Further duties of viewers.—Whenever a public ditch, drain or water course is located wholly or in part in the bed of a private ditch already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated and cost of same, on each tract of land, and deduct the same from the assessment thereon.

Ib., Sec. 4.

925. Assessment.—All lands benefited by a public drain, ditch or water course, shall be assessed in proportion to the benefits for the construction thereof, whether it passes through the lands or not, and the viewers in estimating the benefits to lands not traversed by said ditch shall not consider what benefits such lands shall receive, after some other ditch or ditches shall have been constructed, but only the benefits that will be received by reason of the construction of the public ditch as it affords an outlet for the drainage of such lands.

Ib., Sec. 5.

926. Powers of viewers.—In locating a public ditch, drain or water course, the viewers may vary from the line described in the petition as they may deem best, provided they commence the ditch at the point described in the petition, and follow down the line therein described as near as practicable; and Provided, further, That when there is not sufficient fall in the length of the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough, not exceeding one-half mile, to obtain a sufficient fall and outlet. And when it will not be detrimental to the usefulness of the whole work, they shall, so far as it is practicable, locate the ditch on the division line between the lands owned by different persons, and they shall, so far as practicable avoid laying the same diagonally across the lands; but they must not sacrifice the

general utility of the ditch to avoid diagonal lines. And all persons whose lands may be affected by said ditch may appear before said viewers and freely express their opinions on all matters pertaining thereto.

927. Damages.—In locating a public ditch, drain or water course, the viewers shall estimate the damages, if any, that any person or persons will sustain by reason of the construction of said ditch, and assess such damages to the parties owning the lands benefited in proportion as each tract of land is assessed for the benefits. Ib., Sec. 6.

928. Meeting and adjournment.—The viewers may proceed immediately to perform their said duties, or adjourn from time to time as it may seem best to their convenience, and file their report with the clerk at least four weeks before the next regular meeting of said board of county commissioners. And if the viewers find the proposed ditch or drain not of public benefit or utility, they may report against the location of the same, giving their reasons therefor. Ib., Sec. 7.

929. Duty of clerk.—It shall be the duty of the clerk, on said report being filed, if it be in favor of the proposed work, to cause a notice to be given by publication, for three consecutive weeks, by posting three written copies of said notice in three public places in the township or townships where the proposed work is located, and one at the door of the court house in said county, of the pendency of said petition, and the time set for the hearing thereof, which notice shall state briefly the proposed beginning, course and terminus of said ditch, with the names of the owners of land who will be affected thereby, so far as can be ascertained by them. And at the same time the clerk shall mail a copy of the said notice to all non-residents whose address is known to him, or can be ascertained by him. Ib., Sec. 8.

930. To establish or dismiss petition.—Said board of commissioners, at the time set for the hearing of said petition shall, if there be no remonstrance filed, proceed to hear such petition, and if they find that the viewers' report is made in accordance with the provisions of this chapter, and if it be in favor of the proposed work, they shall establish the same as specified in the report. But if the viewers report against the proposed work, the board shall dismiss the petition, and tax the costs as herein provided. Ib., Sec. 9.

931. Rights of third party.—It shall be lawful for any person interested in the location of the proposed work to file with the board of commissioners, at or before the time set for Ib., Sec. 10.

the hearing of the petition, a remonstrance against the ditch as located by the viewers on and across his lands; or any person deeming his assessment too high, or damages allowed him too low, may remonstrate for such reason against the actions of the viewers. But such person shall file a bond with two free-hold sureties, for the payment of all costs and expenses caused by such remonstrance, if the action of the viewers be sustained by reviewers to be appointed as hereinafter provided. And thereupon said board of commissioners shall appoint three disinterested free holders of the county, not akin to any person interested in the proposed work, as reviewers, to meet at a specified time and place preparatory to commencing said review, and it shall be the duty of the clerk to issue to said reviewers a certified copy of the petition and remonstrance, and order of the board appointing said reviewers.

Ib., Sec. 11.

932. Duty of reviewers.—Such reviewers shall meet at the time and place specified in the order issued to them by the clerk and proceed to review the action and report of the viewers, as well as the entire premises through which the proposed work extends, and shall be vested with all powers granted to the viewers originally, except that if they find the proposed work of public benefit or utility, they shall not change the line of any ditch as located by the viewers at any other places than those contemplated in the remonstrance, and then only far enough to do justice to the party remonstrating. And they shall obtain from the clerk the report of the viewers, which they shall carefully preserve and return to the clerk when they have completed their review, and they shall file with the clerk a report of their proceedings in the premises, after having subscribed and sworn to the same, at any time before the next regular meeting of said board; and if the reviewers sustain the action of the viewers and make no change in the proposed work, their report need only state that, after having made full examination of the viewers' report as well as the entire premises through which the proposed work extends, they find the action of the viewers just and correct and that they sustain and approve the action of the same.

Ib., Sec. 12.

933. Report of reviewers.—Upon filing of the report of the reviewers, as required by the preceding section, the clerk shall, when the board of commissioners convenes in regular session, record the same, together with the proceedings had in the matter of the petition, and if said reviewers sustain and approve the action of the viewers, without change, all costs occasioned in consequence of the remonstrance shall be taxed

against the parties remonstrating, and a fee bill shall issue thereon by the clerk and be collected as provided by law.

934. Changes. Costs.—If the reviewers find the proposed work of public benefit or utility, and do not sustain the entire action of the viewers, but make changes in favor of the remonstrance, the costs occasioned in consequence of the filing of the remonstrance shall be taxed as a part of the total cost of the work as the same is taxed against the parties benefited in proportion to their benefit; and if the reviewers find the proposed work not of public benefit or utility, the entire costs shall be taxed against the petitioners and collected as provided in the foregoing section. Ib., Sec. 13.

935. Duty of county commissioners.—Upon the filing of the report of the reviewers, the board of county commissioners shall, if they find such report made in accordance with the provisions of this chapter, establish the same as described in the report of the viewers, as they find the same sustained, corrected or changed in the report of the reviewers. Ib., Sec. 14.

936. Meeting of viewers and reviewers.—Whenever the board of county commissioners establish a public ditch, drain or water course, they shall order the viewers, if same is established without remonstrance, according to the viewers' report, or reviewers, if same is established according to their report, to meet at a time and place specified after the lapse of ten days, and make a final report, in which they shall specify the time in which each share or allotment of the ditch shall be constructed or completed, and they shall apportion the costs of the location thereof, the damages, if any, and compensation to laborers who assisted in making out the ditch, and award to each person or corporation owning lands assessed for the construction of said work their proportionate share of said costs and expense, and shall specify the time in which said cost and expense be paid to the county treasurer, and file their report with the clerk after having subscribed and sworn to the same. And it shall be the duty of the viewers and reviewers to file with their reports an account of the names of the laborers and the time each one was employed by them, and all compensation and damages allowed by them shall be collected as other taxes are collected, and paid out, when collected, on an order from the clerk to the parties entitled thereto. Ib., Sec. 15.

937. Appeal cases.—Any person or corporation aggrieved thereby may appeal from any final order or judgment of the board of commissioners made in the proceedings and entered upon their record determining the following matters: Ib., Sec. 16.

First—Whether said ditch will be conducive to the public health, convenience and welfare.

Second—Whether the route is practicable.

Third—Whether the assessments made for the construction of the ditch are in proportion to the benefits to be derived therefrom.

And the appellant shall file with the clerk an appeal bond to be approved by the clerk of the circuit court, conditioned that he will duly prosecute such appeal and pay all costs that may be adjudged against him in the circuit court: Provided, Such appeal be taken within thirty days after final judgment of the board of commissioners is made.

Ib., Sec. 17.

938. Plural appeals.—If more than one appeal be taken the judge of the circuit court shall order the cases to be consolidated and tried as one case, and the rights of each party shall be determined by the jury in its verdict.

Ib., Sec. 18.

939. Duty of clerk.—As soon as the final report of the viewers or reviewers is filed the clerk shall let the jobs of digging and constructing each share or allotment separately, of the entire work. And he shall give notice for three consecutive weeks, by posting in three public places in the vicinity of the proposed work, and at the court house door in said county, of the time when, and the places where, he will let to the lowest responsible bidder, each and every share or allotment thereof, commencing at the one including the outlet, and thence in succession up stream, to and including the source. And no bid shall be entertained which exceeds more than twenty per cent. over and above the estimated cost of constructing in any case. The clerk shall receive a bond from the contractor, with two free-hold sureties, payable to the State, for not less than double the amount for which the same is let, to be by him approved, conditioned that he will faithfully perform and fulfill his contract, and pay all damages that may accrue by reason of the failure to complete the job according to contract.

Ib., Sec. 19.

940. Reletting job.—A job not completed within the fixed time, may be relet by the clerk to the lowest responsible bidder, subject to the conditions contained in the preceding section. But the clerk may, for a good cause shown, give further time to any contractor, not to exceed sixty days.

Ib., Sec. 20.

941. Duty of county surveyor.—It shall be the duty of the county surveyor, on being notified by any contractor that his job is completed, to inspect the same, and if found satisfactory, and according to contract, to accept the same, and give the contractor a certificate of acceptance stating that said job is completed according to specifications of said ditch.

942. Where route in two counties.—Whenever the route of a proposed ditch extends into two or more counties, the petition shall be signed by one or more of the land owners in each county, whose land will be liable to be assessed for the construction of said ditch, and filed with the clerk of the county containing the head or source of the proposed ditch at least ten days previous to the meeting of the board of county commissioners, and thereupon the clerk of such county shall transcribe and transmit to the clerk of each other county interested, a certified copy of said petition, and it shall be the duty of the board of commissioners of each county interested, to appoint three disinterested free holders of their respective counties, as viewers, in like manner as provided for the appointment of viewers on a ditch in but one county, to meet and act conjointly at such time and place as the board of county commissioners of the county where the petition is filed may designate, and they shall have the same powers, and perform the same duties, as heretofore set forth, and they shall file a report of their proceedings with the clerk of each of the counties where interested, and each county shall bear its just and equal proportion of the expense of said work. Ib., Sec. 21.

943. Commissioners to act conjointly.—Boards of commissioners shall act in the same manner, so far as applicable, as required by this chapter for establishing ditches in but one county, and they shall act conjointly. Ib., Sec. 22.

944. Manner of cleaning ditches.—Such joint ditch shall be cleaned and repaired, or enlarged, in like manner as for ditches in but one county, by the joint action of the public officers of the counties interested. Ib., Sec. 23.

945. Draining public road and railroad.—When any ditch established under this chapter drains, either in whole or in part, any public or corporate road or railroad, or benefits any of such roads, so the bed or traveled track is made better by the construction of such ditch, the viewers or reviewers shall apportion to the same such portion of the costs and expenses thereof as to private individuals, and require them to pay such costs in like manner as individuals. Ib., Sec. 24.

946. Duty of Sheriff.—The orders issued by the clerk to viewers and reviewers shall be served by the sheriff, and he shall be paid such fees as are allowed by law for similar services, which cost shall be added to the cost of constructing such ditch or drain, and paid out of the fund provided for the same. Ib., Sec. 25.

947. Majority to act.—A majority of viewers or reviewers shall be competent to act: Provided, That when a ditch ex- Ib., Sec. 26.

tends into more than one county, a majority from each county must be present.

Ib., Sec. 27.

948. Lien.—The amount of assessments made by the viewers, and confirmed by the board of county commissioners, shall be a lien upon the lands so assessed, from the date of the order of board of commissioners establishing the ditch; and such order, together with the report of the viewers on which the ditch is established, shall be a notice to all the world of the existence of such lien.

Ib., Sec. 28.

949. Extent of chapter.—This chapter shall apply whenever practicable to any organized system of drainage now operating or that may hereafter be operated in this State.

CHAPTER XVI.

DRAINS BY COUNTIES.

Ch. 5035, Acts 1901, Sec. 1.

950. Public ditch, drain or canal.—Whenever it shall be deemed necessary or expedient for the benefit of any lands that are low, submerged or liable to be submerged, to establish a public drain, ditch or canal in any of counties of this State by a majority of those owning lands through which such proposed ditch, drain or canal shall run, and those owning contiguous lands thereto that are to receive the benefit of such drainage, a majority of those owning such lands as aforesaid shall present a petition to the county commissioners of the county in which such ditch, drain or canal is to be located, with a plat or survey of the same, setting forth the dimensions of such drain, the lands through which the same shall run, its length, and the lands to be benefited. Whereupon the county commissioners shall lay the same over until the next or succeeding regular meeting, as they may determine, and give notice by publication for at least three weeks in some newspaper published in the county of the time when they will consider such petition, citing all persons who may be interested to appear and present any reason why such petition should or should not be granted.

Ib., Sec. 2.

951. Powers of county commissioners in reference thereto.—Should the county commissioners, when the same has been considered, for good and sufficient reasons deem it improper to grant such petition, then the same shall be dismissed, but should they conclude that such petition ought to be granted, they shall so determine.

952. County commissioners to appoint committee.—When the county commissioners shall determine that such ditch, drain or canal shall be established, they shall appoint a committee of three competent, disinterested persons, who are citizens of the county, who shall cause an accurate survey to be made of the proposed drain, particularly naming such drain by which it shall thereafter be known, and shall establish the commencement, route and terminus of said drain, and the width, length, and depth thereof, and make and present to the county commissioners at their next regular meeting an estimate of the cost of said drainage; and upon report of said committee to them, they shall advertise not less than thirty days in a newspaper published in the county for bids on said work, to be given to the lowest responsible bidder, with the privilege of rejecting all bids that may be offered should the same be considered unreasonable, and in case said bids are rejected they may again advertise for further bids. Whenever the survey for any ditch or canal is made through or on any land, and objection is made by the owners of such land, the board of county commissioners may proceed to condemn the right for such canal or ditch, as is prescribed for acquiring private property for public use. Ib., Sec. 3.

953. Bond required before letting contract.—Before letting the contract for the work of digging such ditch, drain or canal, the county commissioners shall require a good and sufficient bond for the construction and completion of said work, with such specifications as may be required, including the time for the completion of the work, which shall be under the supervision of the committee appointed as aforesaid. Ib., Sec. 4.

954. Completion of work.—When the work shall be completed the committee shall certify the same to the board of county commissioners, who shall also inspect such work before final payment is made to the contractor, and such confirmation with the report of the committee that the work has been done according to contract shall be made a matter of record: Provided, That nothing in this chapter shall prevent the commissioners from making payments in installments during the progress of the work if deemed expedient. Ib., Sec. 5.

955. Committee to view land before letting contract. Before letting such contract, the committee appointed by the commissioners shall view all the lands to be benefited by such drain and assess each parcel according and in proportion as each shall be benefited, both those lands lying immediately along such ditch, drain or canal, and those adjacent thereto, for all the expenses that may be incurred in the construction of said drain and keeping the same in repair Ib., Sec. 6.

from year to year, and shall file a report of same with the board of county commissioners who shall at once give notice by publishing in a newspaper published in said county for not less than two weeks prior to a regular meeting that they will at their next regular meeting hear complaints from the owner or agent or any real estate against the assessment so made against their said property; and said county commissioners shall have the full power to equalize the assessments so made against said real estate, but cannot raise or lower the entire assessment so made by the said committee so appointed by them to make said assessments, and the said amounts shall, by the commissioners, when they are satisfied that such assessments are just and proper, be turned over to the tax assessor with instructions to levy such assessment upon such parcel of land as aforesaid. Said assessment may be levied for one year or in yearly assessments for two, three, four, or six years, according as it may be deemed advisable and for the best interest of those concerned, and shall be collected by the tax collector in like manner as other taxes are collected, and made a special fund for the cancellation or redemption of the indebtedness incurred in the construction of said ditch, canal or drain as aforesaid.

Ib., Sec. 7.

956. Assessments.—When such assessments have been ordered by the county commissioners they may issue script bearing six per cent. interest, redeemable in one, two, three, four or six years, as the case may be, upon which they may borrow money with which to pay for the work aforesaid, and such script shall be made a lien upon the lands assessed as aforesaid until such script shall be redeemed and the indebtedness fully satisfied: Provided, That no lien shall lie or be enforced against any tract of land for more than the amount so assessed against said tract.

Ib., Sec. 8.

957. Contracts.—All contracts, whether executed or executory, entered into by the county commissioners of any county in the State of Florida, under and by virtue of Chapter 4807, Laws of Florida, approved June 1, 1899, under which any ditching or draining has been done or is being done, are hereby declared legal and binding, and all assessments which may have been made and expenses incurred in the construction of any drain under said Chapter 4807, may be collected as provided.

Ib., Sec. 9.

958. Compensation of committee.—The committee appointed by the county commissioners for the purposes aforesaid shall receive such compensation for their services as may be agreed upon.

959. Application to lateral ditches.—The provisions of this chapter with reference to locating, surveying, cutting and maintaining the same, and every other provision of said chapter with reference to such public ditch, drain or canal, be and the same is hereby made applicable to all lateral ditches and drains that may be deemed necessary or expedient for the drainage and benefit of lands lying in the vicinity of such public ditch, drain or canal, that may be reached, drained or benefited by lateral ditches or drains. Ch. 5201, Sec. 12, Acts 1903.

960. May be established in like manner as main ditch. Such lateral ditches or drains may be made a part of the original plat and survey of such main ditch, drain or canal, and may be included in the original petition for digging, cutting, opening and maintaining the same; or such lateral ditch or drain may be established in like manner under the provisions of this chapter at any time after the opening of such main ditch, drain or canal, upon a petition of a majority of those whose lands are to be benefited thereby. Ib., Sec. 13.

(Drainage by State: See Ch. 5377 and Ch. 5378, Appendix.)

CHAPTER XVII.

FINE AND FORFEITURE FUND.

961. Of what the fine and forfeiture fund consists. There shall be in every county of this State a separate fund to be known as the fine and forfeiture fund. Said fund shall consist of all fines and forfeitures collected in the county under the penal laws of the State, all costs refunded to the county, all funds arising from the hire or other disposition of convicts and the proceeds of any special tax that may be levied by the county commissioners for expenses of criminal prosecutions. The treasurers of the respective counties shall be the custodians of said fund and their official bonds shall cover all sums paid into the said funds, and said treasurers shall keep a separate book of account of the amounts derived from the various sources above specified, and shall pay out said funds only for criminal expenses, fees and costs where the crime was committed in the county, and the fees and costs are a legal claim against the county, in accordance with the provisions of this chapter. Ch. 4672, Acts 1899, Sec. 1, amending Sec. 1, Ch. 4323, Acts 1895.

962. Levy of a special tax.—The board of county commissioners of every county are hereby authorized to levy a Ib., Sec. 1.

special tax, not to exceed two mills upon the real and personal property of the respective counties, to be assessed and collected as other county taxes are assessed and collected, for such costs of criminal prosecutions.

Ch. 5155, Acts 1903, Sec. 1, amending Sec. 2, Ch. 4323, Acts 1895.

963. Disposition of fines and forfeitures. Reports.—All fines imposed under the penal laws of this State, and the proceeds of all forfeited bail bonds or recognizances, shall be paid into the fine and forfeiture fund of the county in which the indictment was found or the prosecution commenced, and judgment must be entered therefor in favor of the State for the use of the particular county. It shall be the duty of the county commissioners of each county to require a full report from all justices of the peace and clerks of county criminal courts, circuit courts, and the county judges, once in each month, within thirty days after the expiration of said month, of the amount of fines imposed by their courts and of bonds forfeited and judgments rendered on said forfeited bonds, and into whose hands they had been paid or placed for collection, the date of conviction in each case, the term of imprisonment and the name of the officer to whom commitment was delivered. If any justice of the peace, county judge, clerk of the criminal court or circuit court, shall fail to make such report for any month it shall be the duty of the board of county commissioners to immediately report to the Governor any such failure or refusal of such justice of the peace, county judge, clerk of county, county criminal and circuit court to make such monthly report, and the Governor may in his discretion suspend such officer or officers from office. The county commissioners shall have authority to withhold any fees or costs of any officer until said officer collects and pays over to the county treasurer all such fines and forfeitures, or furnishes a satisfactory excuse for not doing so. The county treasurer shall at every meeting of the county commissioners furnish them with an itemized list of all fines or forfeitures collected and paid to him, by whom paid and in what case imposed, also all costs refunded, convict hire received, or special tax collected and paid into said fund, with a statement of all amounts paid out of said fund.

Ch. 4326, Acts 1895, Sec. 1, amending Sec. 1, Ch. 4323, Acts 1895.

964. Clerk to issue certificate.—It shall be the duty of the clerk of the circuit court to issue a certificate under the seal of the court, and keep a stub copy of the same, to each witness appearing on the part of the State, stating therein the name of the case and the amount of compensation to which he is entitled, where the same is a claim against the county treasurer out of the fine and forfeiture fund, and shall be received in payment of all fines and forfeitures or any special tax levied for payment of criminal costs after being registered by the county treasurer.

965. Clerk not entitled to fee.—The clerk issuing the certificate shall not be entitled to receive any fee for performing the duty herein imposed. Said clerk shall make out a pay roll in duplicate giving the name of each witness summoned for the State before the court, the number of days of attendance, miles traveled and the amount he is entitled to. The witness shall sign same in presence of a witness and the judge of the court shall approve same if found correct. Ibid.

966. Form of pay roll.—The form of this pay roll shall be prescribed by the county commissioners, and one copy filed with the county treasurer and the other copy filed in the clerk of the circuit court's office for the information and use of the county commissioners in reviewing the acts of the clerk issuing certificates to witnesses appearing on behalf of the State; and the county commissioners shall have power to reject any witness certificate or any portion thereof that they may deem illegal and pay into the fine and forfeiture fund the amount rejected out of any fees or costs going to the clerk issuing the certificate, in case the clerk fails to at once pay the amount. Ib., Sec. 1.

967. Pay rolls.—Where the witness on behalf of the State appears in any case in county courts or county criminal courts of record, the clerks of said courts shall make out pay rolls as prescribed in the preceding section, and when said pay rolls are approved by the judge and sworn to by said clerk, they shall be presented to the clerk of the circuit court, one to be filed with the said clerk and one with the county treasurer. If said clerk of the circuit court is satisfied of the correctness and legality of the pay roll, he shall issue certificates to each witness legally and properly on said pay roll for the amount due him in the same manner as for witnesses in the circuit court, and such certificates shall constitute the same claim against the county, and be receivable for fines and forfeitures or any special tax levied for criminal costs. Ch. 4323, Acts 1895, Sec. 5.

968. Clerk responsible.—If any portion of said certificates are rejected by the county commissioners, the clerk of the court where the witness appeared shall be held responsible for the same, and if immediate payment is not made by said clerk, the county commissioners shall deduct the amount rejected from any fees going to said clerk. Ib., Sec. 5.

969. How certificates paid when no money in fund.—In case there is no money in the fine and forfeiture fund when any witness certificate which has been certified is presented, it shall be the duty of the treasurer to register said certificate in a book to be kept for that purpose, and said certificates Ib., Sec. 6.

shall be entitled to payment out of said fund in the order in which they are registered.

Ib., Secs. 3 and 7, consolidated.

970. If defendant is not convicted, or dies.—If the defendant is not convicted, or the prosecution is abated by the death of the defendant, or if the costs are imposed on the defendant and execution against him is returned no property found, or if a nolle prosse be entered, in each of these cases the fees of witnesses and officers arising from criminal causes shall be paid by the county in the manner specified in the next three sections: Provided, That when a committing magistrate holds to bail or commits a person to answer to a criminal charge and an information is not filed or an indictment found against such person, the costs and fees of such comimtting trial shall not be paid by the county, except the costs of executing the warrants.

Ch. 4672, Acts 1899, Sec. 2, amending Sec. 8, Ch. 4323, Acts 1895.

971. Officer to make out accounts as directed.—The officer shall make out his account against the county in such form as the county commissioners may require, stating the services for which the fee is charged, the title of the case in which the services were performed, and the facts which, under the provisions of the preceding section, make the fees a good claim against the county, including all legal charges and costs before justices of the peace, and present the same to the board of county commissioners, with the affidavit that the same is correct.

Ibid.

972. Powers and duties of county commissioners.—The county commissioners shall have the right to reject all or any portion of any account which is not a valid claim against the county, and shall allow and pay the same only when it is just correct and reasonable, and no constructive mileage or illegal or unnecessary item or charge in any frivolous case shall be allowed.

Ibid.

973. County commissioners to audit. How payable.—The county commissioners shall audit all bills and accounts and order a warrant, signed by the chairman and countersigned by the clerk of the circuit court, under the seal of the court, for the amount that they may find to be due, payable out of the fine and forfeiture fund, and a copy of all such warrants shall be kept by the clerk of the circuit court. Such warrants shall be payable in the order in which they are presented, and if there are no funds applicable to their payment in the treasury, the treasurer shall register each warrant presented to him, and such warrants so registered shall be payable in the order of their presentation to the treasurer with interest thereon from the date of such registration.

974. Warrants receivable for taxes.—Such registered warrants shall also be receivable for all fines and forfeitures, but not for the special tax levied for the payment of criminal costs. All certificates or warrants issued under this chapter and paid shall be cancelled by the county treasurer, and a record of the same shall be made and presented to the next meeting of the county commissioners for inspection and verification; all certificates or warrants not paid on presentation, shall be registered and so marked or stamped by the county treasurer and returned to the proper holder thereof. Ib., Sec. 2.

975. Right of officer to test validity.—Whenever any officer shall have presented to the county commissioners any bill or account against any county and such bill or account or any part thereof shall have been rejected by the county commissioners, such officer shall have the right to test the validity of his said charge, bill or account, by suit against the county, and shall have the right to recover a judgment for the amount or such part thereof as shall be a legal claim for services rendered in the performance of duty, with interest thereon: Provided, That no such claim shall be sued on more than one year after its final rejection by the county commissioners. Ib., Sec. 2.

976. Fees for feeding prisoners.—The sheriff shall make out and present to the board of county commissioners, at any regular meeting thereof, his bill for fees for feeding prisoners and the period for which the charge is made, which fees shall be as follows: For feeding ten prisoners or less, forty cents per day each; and for feeding all over ten prisoners thirty cents per day each; and it shall be the duty of said board to properly audit the same, and order a warrant drawn against the fine and forfeiture fund of the county for the sum found to be due. Ch. 4527, Acts 1897, Ib., Sec. 2; Sec. 1 amending Sec. 9, Ch. 4323, Acts 1895.

977. Prisoner confined in different county.—Where the prisoner is confined in the jail of a different county from the one in which the crime was committed, then the sheriff's bill for feeding such prisoner shall be presented to the board of county commissioners of the county in which the crime is alleged to have been committed, and paid by such county. If the sheriff should subsequently collect any such fees for feeding a prisoner, it shall be his duty to pay the same to the county treasurer, to go into the fine and forfeiture fund, taking duplicate receipts from him specifying particularly what it is for, and file one of them with the board. The county commissioners shall see that there is always set aside and retained in the fine and forfeiture fund out of the moneys collected from the special tax authorized to be Ibid.

collected for such fund, enough cash to pay for keeping and feeding such prisoners.

Ch. 4323, Acts 1895, Sec. 10.

978. Change of venue.—In case of change of venue in any case, all fines and forfeitures in such case go to the county in which the indictment was found and the fees of all officers and witnesses are a charge upon the county in which the indictment was found, in like manner as if the trial had not been removed. All costs and fees arising from the coroner's inquests shall be a charge upon the county where the inquest is held, and be payable from the general revenue fund of the county.

Ch. 5156, Acts 1903, Sec. 1, amending Sec. 11, Ch. 4323, Acts 1895.

979. Distribution of funds received from hire of State convicts.—The Commissioner of Agriculture shall on the first day of January, April, July and October, of each year, or as soon thereafter as possible, file with the Comptroller a certified list of the State prisoners and the amount paid into the State treasury for the preceding three months for the service or hire of said State prisoners. Upon receipt of said list the Comptroller shall cause to be prepared a statement showing the assessed valuation of property in each county as shown by the assessment rolls on file in his office for the assessment of properties, next preceding the first day of January, April, July and October, as aforesaid; and when completed the Comptroller shall draw his warrant on the State Treasurer in favor of the county treasurer of each county for the proper amount going to each county in accordance with and upon the basis of the total valuation of property as shown by the assessment roll as aforesaid, one-half of which sum shall go into the fine and forfeiture fund, and one-half shall go into the general revenue fund of the county. The county commissioners of the respective counties are authorized and empowered to hire out or otherwise contract for the labor of all county convicts as they may deem advisable. The proceeds of all such contracts to go to the fine and forfeiture fund.

Ch. 4430, Acts 1895, Sec. 1.

980. Comptroller to prepare blanks.—The Comptroller is authorized and required to prepare suitable blanks and forms to be used in connection with the auditing of all claims under this chapter, and to furnish the clerks of the circuit courts with a printed copy of the same.

Ib., Sec. 2.

981. Duty of county commissioners.—It shall be the duty of the county commissioners of the respective counties to adopt forms furnished in accordance with the preceding section and have printed a sufficient number of said blanks for the use of the officers of their respective counties.

CHAPTER XVIII.

FISH AND GAME WARDENS.

(See Ch. 5435, Appendix.)

982. Petition for.—Whenever a petition signed by fifty registered voters and tax payers shall be presented to the board of county commissioners of any county in this State praying that a fish and game warden be appointed for such county, the county commissioners shall at once make entry on their minutes of the fact of such presentation of such petition, and shall forthwith recommend to the Governor the name of some suitable person resident of such county for appointment as such warden for such county. The person so recommended shall be appointed by the Governor and shall hold his office as such warden for two years, or until his successor is appointed and qualified. The Governor may at any time on the recommendation of the county commissioners of any county remove the fish and game warden appointed for such county.

Ch. 4782, Acts 1899, Sec. 1, amending Secs. 1 and 2, Ch. 4563, Acts 1897.

983. Duty of fish and game wardens.—The duty of fish and game wardens shall be to enforce the fish and game laws of the State of Florida, for the protection of fish, oysters and game in the counties for which they shall be appointed, and to prosecute all violations of such laws. And for the better enforcement of the law, they may appoint deputies residing at convenient localities.

Ch. 4563, Acts 1897, Sec. 3.

984. Compensation.—The compensation of the fish and game wardens shall be fixed by the county commissioners of each county.

Ib., Sec. 4.

985. Powers of fish and game wardens. — The wardens and their deputies shall have power to arrest and take before a magistrate and subject to trial, according to law, any person violating any of the fish and game laws of the State. And the magistrate may order the seizure of any of the implements used by the offenders in violation of such laws.

Ib., Sec. 5.

986. Sheriffs to act as fish and game wardens.—In counties where no such wardens are appointed, it shall be the duty of the sheriffs of the several counties to act as such fish and game wardens, with the same powers, duties and responsibilities.

Ib., Sec. 6.

(For penalties for violations of game laws, see Sections 3749 to 3797.)

CHAPTER XIX.

OF THE COUNTY SURVEYOR.

Ch. 56, Acts 1845, Secs. 1 and 2.

987. (646.) Duties of the county surveyor.—The county surveyor shall make accurate surveys of all lands in his county which he shall be requested to survey by any person claiming the same or an interest therein, or which he may be required to survey by an order of the court, and he shall make a plat of same, if requested.

Ib., Sec. 2.

988. (647.) Oath.—The said surveyor shall take an oath before any officer authorized to administer the same, faithfully to perform the duties of his office; and the surveyor shall swear his chain bearers.

Ch. 3437, Acts 1883, Secs. 1 and 3.

989. (648.) Deputies.—The county surveyor is authorized to appoint deputies, and all acts of a deputy surveyor so appointed shall be of the same force and validity as though done by the county surveyor in person; and the county surveyor shall be responsible for the acts of his deputy.

Ch. 717, Acts 1855, Sec. 1.

990. (649.) Fees.—The county surveyor shall be entitled to the following fees, viz.: For every day's actual service he shall receive five dollars per day from the day he leaves his home until the survey is finished; and the person employing such county surveyor shall pay the chain bearers.

CHAPTER XX.

OF THE SHERIFF.

Ch 1659, Acts 1868, Sec. 1.

991. (650.) To execute process and preserve the peace.—It shall be the duty of the sheriffs, in their respective counties, to execute all writs, processes and warrants directed to them, and they shall be conservators of the peace; and it shall be their duty, and they shall have the authority, with force and strong hand when necessary, to suppress all tumults, riots and unlawful assemblies, and to apprehend without warrant any person who is in the disturbance of the peace, and to carry him before the proper judicial officer, that further proceedings may be had against him according to law.

992. (651.) May command assistance and raise power of the county.—It shall be lawful for the sheriff to raise the power of the county and to command any person to assist him, when necessary, in the execution of his office. Ib., Sec. 2.

993. (652.) May raise militia with advice of county judge. Whenever considerable opposition shall be made against the sheriff, in the discharge of his duty, or there shall be reasonable ground of suspicion that considerable opposition will be made, he shall have power, with the advice of the judge of the county court, to raise the militia of the county, or so many of them as such sheriff and judge of the county court shall judge necessary to remove opposition. Ib., Sec. 3.

994. (653.) Services to county commissioners. — The sheriff shall attend the meetings and execute the orders of the board of county commissioners of his county, and for services to said board he shall receive such compensation out of the county treasury as they shall deem proper. Ch. 157, Acts 1848, Secs. 1 and 4.

995. (654.) To be ex-officio timber agent.—The sheriff of each county in this State shall, ex-officio, act as timber agent for his county, and he shall receive as pay for his services one-fourth of the net proceeds arising from all seizures, and of all net amounts recovered from trespassers reported by him upon the lands of the State or of any fund of the State. Ch. 3020, Acts 1877, Sec. 3.

996. (655.) Duties as timber agent. — It shall be the duty of the timber agent to inquire diligently into all cases of trespass upon the public lands that may come to his knowledge, and to make complaint thereof before the court or any officer having jurisdiction, that the parties offending may be arrested and dealt with according to law; and said timber agent shall have power and authority in his county to arrest any person trespassing upon the public lands, and shall have power and authority to seize all timber that shall have been cut upon the public land of the State, or removed therefrom, and to sell the same at such places within the district as he may deem most convenient, after giving thirty days' notice by one publication in the newspaper published nearest the place of sale, and posting the notice at three public places in the county where the sale is to take place. Ib., Sec. 4.

997. (656.) Proceedings on claim to timber.—When any timber shall be seized by any timber agent under the provisions of the preceding section, and any person shall claim the same as his property, and that said timber was not cut upon or removed from the public lands of the State, such Ib., Sec. 6.

claimant may file his petition under oath, in reference thereto, in the office of the clerk of the circuit court of the county in which the timber is lying, and upon motion before the judge of the circuit court at chambers, the said judge shall appoint three proper persons to appraise such timber, and on return of such appraisement, if the claimant shall with one or more sureties, to be approved by the judge execute a bond to the Governor of the State of Florida and his successors in office, for the payment of a sum equal to the sum at which the timber was appraised, the judge shall order the timber to be delivered to the claimant, and the bond shall be lodged with the proper officer of the court, and at the next term of the circuit court the evidence shall be heard, and if judgment shall pass in favor of the claimant, the court shall order said bond to be cancelled, but if judgment shall pass against the claimant, as to the whole or any part of such timber, and the claimant shall not at once pay into the court the amount of the appraised value of such timber, with the costs, judgment shall be granted upon the bond, on motion, in open court, without further delay.

Ib., Sec. 7.

998. (657.) Certificate of reasonable cause for seizure.—When any claim on account of the seizure of timber shall be tried, and judgment shall be given for the claimant or claimants, if it shall appear to the court that there was a reasonable cause of seizure, the court shall cause a proper certificate of entry to be made thereof, and in such case the agent who made the seizure shall not be liable to action, suit or judgment, on account of such seizure.

TITLE X.

OF CITIES, TOWNS AND PROVISIONAL MUNICIPALITIES.

CHAPTER I.

OF CITIES AND TOWNS.

Incorporation, or organization and jurisdiction. Sections..... 999-1007
President of council. Section..... 1008
Ordinances to be submitted to mayor. Section..... 1009
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May impound cattle, when. Section..... 1105
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999. (658.) Number of inhabitants necessary to incorporate.—It shall be lawful for the male inhabitants of any hamlet, village or town in this State, not less than twenty-five in number, who shall have the qualifications hereinafter prescribed, to establish for themselves a municipal government with corporate powers and privileges as hereinafter provided.

Ch. 2047, Acts 1875, Sec. 1.

The State gives the right to be a municipal corporation, and the right to bring action to arrest the usurpation of such franchise does not belong to the individual citizen, but to the Attorney-General.—Robinson v. Jones, 14 Fla., 256.

Ch. 1688, Acts 1869, Sec. 3.

1000. (659.) Distinction between cities and towns.—Whenever any municipal government is established, and it shall appear that there are three hundred registered voters within the limits hereby to be designated, it shall be and the same is hereby incorporated and designated as a city, entitled to the privileges of a city. All municipal governments having a less number of voters than those named above shall be and the same are hereby designated and declared incorporated towns, entitled to the privileges and rights of incorporated towns.

Ib., Sec. 2.

1001. (660.) Publication of notice to assemble and organize.—Whenever any community of persons shall desire to form a municipal corporation under the provisions of this chapter, they shall, for a period of not less than thirty days, cause to be published in some newspaper of the county, or by posting in three places of public resort in the immediate vicinage, a notice requiring all persons who are registered voters, residing in the proposed corporate limits, which shall be stated in this notice, to assemble at a certain time and place to select officers and organize a municipal government.

The requirement of thirty days' notice is complied with if there be thirty days excluding first and including last day, and the proceedings for incorporation may be had on last day.—State v. Town of Winter Park, 25 Fla., 371, 5 So. Rep., 818.

Ib., Sec. 4.

1002. (661.) Proceedings of meeting.—At the same time and place designated in the notice aforesaid, the qualified electors present, being not less than two-thirds of those whom it is proposed to incorporate, and not less than twenty-five in number, shall select a corporate name and seal for the municipality which they propose to form, and designate by definite metes and bounds the territorial limits thereof. They shall then proceed to choose by a vote of a majority of the said electors a mayor and not more than nine and not less than five aldermen, who shall be known as the city council, and in whom shall vest the government of the city. There shall also be chosen at the same time and place, and in like manner, a city clerk and a marshal. The mayor, clerk and the marshal shall continue in office for the period of one year from the date of their election, or until their successors are elected and qualified: Provided, That the metes and bounds in this section shall not in any case apply to the fixing or establishing the boundary lines of towns and cities now or heretofore incorporated by the now existing laws of this State.

Ch. 3314, Acts 1881, Sec. 1.

1003. (662.) Terms of aldermen.—All aldermen elected for any incorporated city or town shall be elected for and hold their office for the term of two years: Provided, That

at the first meeting of aldermen so elected they shall by lot divide their body into two classes, as nearly equal in number as possible, one of which class shall hold office for two years, and the other class shall hold their offices for the term of one year, and an election shall be holden to elect the successors of each class, so as to have their successors elected at the expiration of the term of the said classes, respectively.

1004. (663.) Oath of officers.—As soon as convenient, within three days from the date of the said election, the mayor-elect shall take before some judicial officer of this State the following oath of office, viz.: "I, A. B., do solemnly swear (or affirm) that I will support, protect and defend the Constitution and government of the United States and of the State of Florida against all enemies, domestic or foreign, and that I will bear true faith, loyalty and allegiance to the same, and that I am entitled to hold office under the Constitution; that I will faithfully perform all the duties of the office of mayor of..... on which I am about to enter. So help me God." And the mayor, upon being so qualified, shall administer to the aldermen and the other officers-elect the like oath, and thereupon they shall be considered fully qualified to assume the functions and powers and enter upon their several duties as officers of the city aforesaid. Ch. 1688, Acts 1869, Sec. 5.

Under the general municipal incorporation acts, neither six months' residence nor registration is requisite to eligibility to office.—State ex rel v. George, 23 Fla., 588, 3 So. Rep., 81.

1005. (664.) Transcript of proceedings of meeting.—A fair and complete transcript of the proceedings of the said meeting shall be prepared by the city clerk, in which shall be embodied the notice by which the meeting was convened, the number of qualified electors present, the style or name, seal and territorial limits of the corporation, and the names of the officers-elect to which the mayor and aldermen shall attach their signatures, attested by the clerk and the corporate seal, which transcript shall be forthwith filed with the clerk of the circuit court in and for the county within which the corporate limits are located, and shall be by him duly entered upon the public records of the said county. Ib., Sec. 6.

1006. (665.) Powers of corporation.—The provisions of the previous sections having been complied with the persons therein named, and their successors, shall thereupon constitute and become a body corporate with full power and authority to take and to hold property, real, personal and mixed, and to control and dispose of the same for the benefit and best interests of the corporation aforesaid, to sue and be Ib., Sec. 7.

sued, plead and be impleaded, and to do all such other acts and things as are incident to corporate bodies.

Existence of corporation cannot be collaterally attacked.—Town of Enterprise v. State ex rel. Attorney-General, 29 Fla., 128, 10 So. Rep., 740.

Ch. 1855, Acts 1871, Sec. 4.

1007. (666.) Jurisdiction to extend over waters in limits. The jurisdiction of said cities and towns, and the authority of the officers thereof, shall be held to have full force and effect over the waters of all rivers, creeks, harbors or bays contained within the corporate limits.

Ib., Secs. 1 and 3.

1008. (667-668.) President of council.—The city council shall, immediately after organization, proceed to elect one of its members president, who shall preside over the council. The president so elected shall, in case of the absence, sickness or other disability of the mayor, act as mayor for the time being and while so acting shall be disqualified from presiding over the council, who shall elect a president pro tem., to preside so long as the disability of the mayor exists. No mayor of any municipal government shall be president of the city council.

Ib., Sec. 2.

1009. (669.) Ordinances to be submitted to mayor.—All ordinances passed by the city council shall be submitted before going into effect, to the mayor or person acting as such, for his approval. If approved he shall sign the same, when it shall become a law. If disapproved, he shall return the same with his objections in writing to the city council, at their next regular meeting, who shall cause the same to be entered in full upon the record of their proceedings, and proceed to consider the mayor's objections, and to act upon the same. If, upon consideration, the city council shall pass the same by a two-thirds vote of the members present, which vote shall be entered upon the records, the ordinance or ordinances shall then become a law, the mayor's objections to the contrary notwithstanding. Any ordinance which shall not be returned to the city council at the next regular meeting of the council after its passage, shall become a law in like manner as if signed by the mayor or person acting as such.

Sec. 8, Ch. 1688, Acts 1869; Sec. 8, Ch. 3850, Acts 1889.

1010. (670.) Qualifications of electors.—Any person who shall possess the qualifications requisite to an elector at general State elections, and shall have paid his poll taxes as provided by law and as prescribed for State elections, and shall have resided in the city or town for six months next preceding the election and shall have been registered in the municipal registration as shall be prescribed by ordinance, shall be a qualified elector of the municipality at such election, except in cases in this chapter otherwise provided: And Provided,

That State or county registration shall not be required to qualify an elector of a city or town.

Gooding v. Brown, 22 Fla., 437.

1011. (671.) Council may regulate registration and elections.—The city or town council shall have full power to establish rules, regulations and fees, for the registration of voters, for the annual election of municipal officers, and for filling of all vacancies which may occur in the city or town government, and for such other municipal elections as may be authorized by law. Ch. 2034, Acts 1874, Sec. 1.

Intention of voters as shown by ballots should be given effect.—State ex rel Smith v. Anderson, 26 Fla., 240, 8 So. Rep., 1.

1012. (672.) Powers of council concerning election returns, expulsion, etc.—The city or town council shall have power and authority to judge of the election returns and qualifications of its own members, to make such by-laws and regulations for their own guidance and government as they may deem expedient, and to enforce the same by fine or penalty, to compel attendance of its members; and two-thirds of the council may expel a member of the same or other officer of the city or town for disorderly behavior or malconduct in office. Ch. 1688, Acts 1869, Sec. 10.

Court will review on mandamus proceedings of council expelling officer. —State ex rel. Donnelly v. Teasdale et al., 21 Fla., 652.

1013. (673.) Ordinances and penalties. — The city or town council shall have power to pass all such ordinances and laws as may be expedient and necessary for the preservation of the public peace and morals, for the suppression of riots and disorderly assemblies and for the order and government of the city or town, and to impose such pains, penalties and forfeitures as may be needed to carry the same into effect: Provided, That such ordinances shall not be inconsistent with the Constitution and laws of the United States or of this State; And Provided, further, That for no one offence made punishable by the ordinances and laws of said city or town shall a fine of more than five hundred dollars be assessed, nor imprisonment for a period of time greater than sixty days. Ch. 3024, Acts 1877, Sec. 1.

Persons under sentence may be worked on the streets under provisions of ordinance. The same act may constitute an offence against municipal law and against State law, the two offenses being separate and distinct.—Hunt v. City of Jacksonville, 34 Fla., 504; Thiesen v. McDavid, Marshal, 34 Fla., 440, 16 So. Rep., 321. Ordinances effective when signed, State ex rel. Smith v. Anderson, 26 Fla., 240, 8 So. Rep., 1.

1014. (674.) Council to keep record and publish ordinances.—It shall be the duty of the city or town council to keep or cause to be kept a regular record of their proceed- Ch. 1688, Acts 1869, Sec. 27.

ings and ordinances, and they shall promulgate, without unnecessary delay, all laws and ordinances which they may enact by posting at the door of the city or town hall, and at the public market place, or by publishing the same in any newspaper in said city or town, in either case for a period of not less than four weeks.

Ch. 3024, Acts 1887, Sec. 2.

1015. (675.) Powers as to streets, sewers, ruins, etc.—The city or town council shall have power to regulate, improve, alter, extend and open streets, lanes and avenues, to cause encroachments and obstructions, decayed buildings and ruins to be removed; to construct drains and sewers, and make to the parties injured thereby such reasonable compensation, and charge upon those benefited such reasonable assessments as may be agreed upon by said council and the said party or parties; and in case no such agreement can be made, then the council shall appoint five discreet persons, holders of real estate in said city or town, to ascertain and fix on the one hand a fair and equitable assessment, and on the other a just compensation, and that the said assessment shall be a lien on the real estate improved and assessed; and that every person who enters his particular drain into the main drain, or common sewer, and receives a benefit therefrom draining his land, shall pay to the city or town his proportional part of making or repairing the same.

The corporation has no authority to appropriate a street to any other uses than travel or right of way to which it was dedicated, and convenience of the whole public, and cannot obstruct the street with public or private buildings.—Lutterloh v. Mayor and Council of Cedar Keys, 15 Fla., 306. Liability for failure to keep in repair.—City of Jacksonville v. Drew, 19 Fla., 106. Horse railway on street.—Randall v. Jacksonville Street R. R. Co., 19 Fla., 409. Steam railway on street.—Garnett v. J., St. A. & H. R. Co., 20 Fla., 889; Fla. Southern R. Co. v. Brown, 23 Fla., 104, 1 So. Rep., 512. Legislature may authorize railroad in street without consent of municipal authority.—State ex rel. City of Jacksonville v. Jacksonville S. R. R. Co., 29 Fla., 590, 10 So. Rep., 590.

Ch. 4859, Acts 1899, Sec. 1.

1016. Term for which franchise may be granted. Condition.—No municipality in the State of Florida shall give or grant any franchise or right to use any street for the purpose of operating along or across the same any street railroad, water works, telephone, gas or electric business or other business requiring the use of mains, pipes or wires in any street, for any term exceeding thirty years; or without reserving the right and requiring the grantee of such franchise or right, as a condition precedent of the taking effect of the grant, to give and grant to the municipality the right at and after the expiration of such term to purchase the street railroad, water works, telephone, gas or electric plant, or other property used under or in connection with such franchise or

right, or such part of such property as the municipality may desire to purchase at a valuation of the property, real and personal, desired, which valuation shall be fixed by arbitration as may be provided by law. Any such franchise or right which shall be granted for a longer time or without conditions herein provided, shall be void.

1017. (676.) Streets, pavements and sidewalks. — The city or town council shall have power to regulate and control the grading, construction and repairs of all streets, pavements and sidewalks, and to require the owners of real estate within the corporate limits to construct uniform and substantial sidewalks around their several lots, and to keep the same in repair; and upon failure to do the same within the time and manner prescribed, the said council may have the same done, which shall be a lien against said lots, which lien may be enforced in the manner provided in Section 1039. Ch. 3024, Acts 1887, Sec. 3.

City not liable in action of trespass on case, nor otherwise than as may be provided by statute, for injury to adjoining lot by grading and improving street.—Dorman v. City of Jacksonville, 13 Fla., 538. City is liable for damages occasioned by open gully in street.—City of Tallahassee v. Fortune, 3 Fla., 19.

1018. Citizens in cities and towns to keep streets in repair in certain cases.—The citizens of incorporated cities and towns in this State containing less than three thousand inhabitants, shall keep all public roads and streets in the limits of such cities and towns in good repair, agreeable to such ordinance, or ordinances, as may be enacted by the town council and approved by the mayor. Ch. 4772, Acts 1899, Sec. 1.

1019. Ordinance in reference thereto.—The town council of each city or town in this State containing less than three thousand inhabitants, is hereby empowered and authorized to pass an ordinance, or ordinances, for the keeping of the public roads and streets within the limits of their respective cities and towns in good repair, and to provide and enforce penalties for the violation of the same. Ib., Sec. 2.

(Municipal convicts: See Section 4114.)

1020. (677.) To abate nuisances and preserve public health.—The city or town council shall have the power to prevent and abate nuisances; to require owners and occupants of lots upon which pools of water are, or are likely to be, to fill them up; to prevent or remove any accumulation of trash, filth, or other matter on or within their premises, and the streets adjacent, which may cause disease, or affect the health of the city or town; to require the owners of lots, as well unoccupied as occupied, to keep down by cutting and

removing the same all excessive growth of weeds and other noxious plants; to regulate and compel persons to erect and keep in repair partition fences, and to pass all laws and ordinances which may be necessary for the preservation of the public health.

1021. (678.) Ditching, filling, etc., by municipality.—If at any time the town or city council of any city or town in this State shall deem it necessary or expedient for the preservation of the public health, or for other good reason connected in any wise with the public welfare or the interests of the city or town and the people thereof, that any lot or lots, block or blocks, or vacant lands lying within the corporate limits of such city or town, which may be lower than any street or streets adjoining the same, or the grade established therefor, or which may be subject to overflow or to the accumulation of pools of water thereon, or which may require to be ditched, drained, filled in, graded or otherwise improved or developed, it shall be lawful for such city or town council to devise, adopt and carry into effect, continue and complete, either through its corporate officers, or through such agents, trustees or contractors as said council may appoint or select, such plan or plans, scheme or schemes, for the ditching, draining, grading, filling, improving and developing of the lot or lots, block or blocks, or vacant lands aforesaid, as may in their judgment be expedient and necessary for the public interests and the public health, or to continue and complete any scheme or plan heretofore devised and adopted as aforesaid.

Ch. 3164, Acts 1879, Sec. 1.

1022. (679.) May take property for purposes of preceding section.—It shall be lawful for such city or town council, in order to carry out the powers vested in them by the preceding section, to take possession of, occupy, appropriate, use and control any land, timber, earth, sand, stone or other material owned by private individuals or corporations, lying in the territory proposed to be improved or adjacent thereto, as may be necessary for the proper and efficient carrying into effect of such proposed scheme or plan of drainage, ditching, grading, filling, or other public improvements aforesaid.

Ib., Sec. 2.

1023. (680.) Parks, streets, etc.—The city or town council is further authorized and empowered to lay off such parks, streets, avenues, lanes, highways, canals, etc., as may seem necessary and expedient for the public health or interest, and to open, fill in, grade, pave, dig, dredge, widen, deepen, and otherwise extend, enlarge, change and improve the same; and said city or town council shall have power and authority to alter, widen, fill in, grade, pave, or discontinue

Ib., Sec. 8, as amended by Ch. 5461, Acts 1905.

any public park, street, avenue, alley, highway or any other way.

1024. Forfeiture of franchise in certain cases.—Whenever any street railroad, gas, electric lighting, telephone, telegraph, or other company or corporation, person, or firm, which has received or shall receive from any municipal corporation in this State any franchise, grant, right, privilege, license or immunity to use, or under which such company, corporation, person or firm, shall use, any of the streets, or parts thereof within such municipal corporation for the placing and maintaining in such streets of any tracks, pipes, wires, poles, or other things necessary to the carrying on of the business of such company, corporation, person or firm, shall violate any of the terms, conditions or provisions of such grant, privilege, right, license or immunity, or shall fail to comply with any reasonable provision of any ordinance of such municipal corporation regulating the use by such company, corporation, person or firm of the streets so used by such company, corporation, person or firm, and shall continue to violate the terms, conditions or provisions under which such franchise, grant, privilege, right, license or immunity was given, or to violate the reasonable provisions of such ordinance, regulating the use by such company, corporation, person or firm, of such streets, for a period of five days after said company or corporation shall have been notified in writing by the mayor or chairman of the board of public works, or president of the city council, of such municipal corporation, to desist from such violation, then said company, corporation, person or firm, shall be deemed to have forfeited and annulled, and shall thereby forfeit and annul, all of the said franchises, grants, privileges, rights, licenses and immunities, and such forfeiture shall be so declared by the judge of the circuit court of the county in which such municipal corporation shall be located, upon the affirmative finding of a jury trying the case, as prescribed in the following sections:

Ch. 4052, Acts 1891, Sec. 1.

1025. Procedure.—Whenever any company, corporation, person or firm, mentioned in the preceding section shall fail to strictly comply with any of the said terms, conditions, or provisions of any franchise, grant, privilege, right, license, or immunity, or any reasonable provisions of any ordinance, regulating the use by such company, corporation, person or firm, of the streets so used by such company, it shall be the duty of the mayor of such municipality, and in case of his failure to act, then of the chairman of the board of public works, or if there be no such officer, then of the president of the city council, to notify in writing, said company, by serv-

Ib., Sec. 2.

ing upon some general officer of such company, or some superintendent or other agent in charge of the property of such corporation, of its failure to comply with the terms, conditions or provisions of such franchise, grant, privilege, right, license, or immunity, or the reasonable provisions of such ordinance.

Said notice shall specify in a general way so as to be reasonably understood, the particular terms, conditions, or provisions of the franchise, grant, privilege, right, license, or immunity or ordinance, which have been, or are being violated, and shall name a time not less than five days thereafter, within which to strictly comply with such terms, conditions, or provisions. If any such company, corporation, person or firm shall, after service of such notice, fail to strictly comply with any of such terms, conditions or provisions, within the time therein prescribed (not less than five days) then and from thenceforth said company, corporation, person, or firm shall be deemed to have forfeited and annulled all of its said franchises, grants, privileges, rights, licenses and immunities, and a petition shall be filed in the name of such municipality in the office of the clerk of the circuit court for the county within which such municipality lies, addressed to the judge of the circuit court of said county, alleging a forfeiture and annulment by such company, corporation, person or firm, of such franchises, grants, privileges, rights, licenses or immunities so given, and setting out the facts upon which such forfeiture and annulment are claimed.

Ib., Sec. 3.

1026. Pleading, practice and procedure.—Upon the filing of such petition, a copy thereof shall be made by the clerk of the circuit court, and shall be served upon such person or firm, or upon some general officer of such company or corporation, or upon some superintendent, or other agent in charge of the property of such company, corporation, person or firm, by the sheriff of said county, and it shall thereupon become the duty of such company, corporation, person or firm, within ten days after such service, to plead, answer or demur to such petition, and thereafter the petitioner and the respondent shall have ten days within which to plead to the other's pleadings, unless greater time shall, for good cause shown, be granted by said judge, until an issue is joined. Whenever an issue of fact is joined, as to whether such terms, conditions or provisions have been violated, a jury of six qualified jurors shall be ordered by said judge, and shall be summoned to try the issue upon an early day to be designated by said judge, in or out of term time, for such trial. The usual provisions of law governing trials at law shall prevail, and the question of fact shall be submitted to the jury under the charges of the court, and the jury shall

render a verdict accordingly. The verdict, if the facts constituting the forfeiture and annulment have been proven, shall be rendered as follows: "We the jury find the defendant guilty;" otherwise, "We the jury find the defendant not guilty."

1027. Judgment.—If the jury find the defendant guilty, then a judgment shall be entered up declaring forfeited and annulled all the franchises, grants, privileges, rights, licenses and immunities under which said company, corporation, person or firm has used said streets for said purposes, and said municipality shall have the right to remove from said streets all tracks, pipes, wire, poles, and other property of said company, as if no such franchise, grant, privilege, right, license or immunity had ever been given. Ib., Sec. 4.

1028. Appeals.—Either party to such proceedings shall have the same right of appeal as in cases at law, except that a supersedeas shall be obtained only upon an order of the circuit judge before whom the case was tried, upon an application therefor, and a hearing of both parties thereon, and upon such terms and conditions as may be prescribed by such judge. Ib., Sec. 5.

1029. (681.) May require owners to drain, fill, etc.—If at any time the city or town council shall deem it necessary or expedient for the preservation of the public health, or for other good reasons, that any lot or lots or vacant lands then lying and being within the corporate limits of the city or town, which may be lower than any street or streets adjoining the same, or the grade established therefor, or which may be subject to overflow or to the accumulation thereon of ponds of water, should be filled in, or ditched and drained, it shall be lawful for such city or town council to direct the owner or owners of said lot or lots of vacant lands to fill in the same to such grade, or to ditch or drain the same, in such manner as the council shall direct. Such notice to be given by a resolution of the council duly passed, a copy of which shall be served upon the owner or owners of said lot or lots or vacant land, or upon his or their agent, or if the owner is a non-resident, or cannot be found within the city or town, and has no known agent within such city or town, a copy of such resolution shall be published for two weeks in some newspaper published in said city or town, and a copy posted upon said lot or lots or vacant lands. If the said owner or owners shall not, within such time as such resolution shall direct, fill in, ditch or drain the lot or lots or vacant lands as therein directed, it shall be lawful for the city or town council to cause the same to be done and to charge and col- Ch. 3164, Acts 1879, Sec. 3.

lect the expenses thereof upon the said owner or owners, which shall give the municipality a lien on such lot or land to be enforced as provided in Section 1039.

Ib., Sec. 4.

1030. (682.) Real estate specially benefited assessed one-third expense.—At any time within one year after any of the improvements or other work authorized and provided for in the preceding sections is completed, or any park, street, highway or other way is laid out, altered, widened, graded, paved or discontinued, when, in the opinion of the city or town council any real estate, including that a part of which may have been taken for that purpose, shall receive any benefit and advantage therefrom, beyond the general advantages to all real estate in the city or town where the same is situated, such city or town council may adjudge and determine the value of such benefit and advantage to any such real estate, and may assess upon the same a proportional share of the expense of laying out, altering, widening, grading or discontinuance; but in no case shall such assessment exceed one-third the amount of such expense, the balance to be borne by the general tax. The city or town council may permit the person or persons liable for said amount to pay the same in installments, to be paid at such time and with such interest (not to exceed six (6) per cent. per annum) as it may determine, and may require said persons to issue to it negotiable obligations for said installments, which shall constitute a lien upon the property against which assessment is made.

Ib., Sec. 5.

1031. (683.) Irregular assessments may be re-made.—Any such assessment upon real estate for the purposes in the preceding sections of this chapter enumerated which has heretofore been made or which may hereafter be made, and which may be invalid by reason of any error or irregularity in the making thereof, and which has not been paid, or which has been recovered back, may be re-made by such city or town council to the amount for which the original assessment ought to have been made or might be made under the provisions of this chapter, and the same shall be a lien upon the estate, and be enforced in the manner provided in Section 1039.

Ib., Sec. 6.

1032. (684.) Damages to buildings, etc.—The expense to be assessed upon the estates, as herein provided, shall include all damages for the land and buildings taken, and in estimating such damages all buildings on the land, a part of which is taken, shall be included, and there shall be deducted therefrom the value of the materials removed, and all buildings or parts of buildings remaining thereon, and the damages for

land taken shall be fixed at the value thereof before the laying out, altering or widening, and in the same manner and upon the same conditions as are provided by law in other cases of laying out, altering, widening, grading or discontinuance of streets and ways.

1033. (685.) Disposition of buildings, etc., when owner neglects.—If the owner of any buildings or materials on land, a part or the whole of which is taken for the purposes named in this chapter, after reasonable notice is given in writing from the city or town council, shall refuse or neglect to take care of the same as public safety or the preservation thereof demands, the city or town council may remove such buildings or materials, either upon the adjoining land of such owner or otherwise, or may sell the same at public auction after five days' notice of such sale, and hold the proceeds of the sale for the benefit of such owner, and the expense incurred by such city or town council, or the value thereof to the owner, shall be allowed in reduction of the damages which said owner is entitled to recover. Ib., Sec. 7.

1034. (686.) Surrender of property to city.—Any person owning real estate abutting on any park, street, canal, highway or other way which may be laid out, altered, widened, graded or discontinued, or any public or private property filled in or otherwise improved, as heretofore provided for, and liable to assessment under this law, may, at any time before the estimate of damages is made, give notice in writing to the city or town council that he objects to the same, and elects to surrender his estate to the city or town where situated; and if said city or town council shall then adjudge that public convenience and necessity require the taking of such estate for the improvements named, they may take the whole of such abutting estate, and shall thereupon estimate the value thereof, excluding the benefit or advantages which have accrued from the laying out, alteration, widening, grading or discontinuance, or other improvements, and such owner shall convey the estate to such city or town, which shall pay him therefor the value so estimated, and the same may be recovered by an action of contract; and the city or town may sell any portion of said estate not needed for such improvements. Ib., Sec. 8.

1035. (687.) Lien of assessment. Installments.—All assessments made under this law shall constitute a lien upon the real estate so assessed, and if the owner of the estate shall give notice to the city or town council at any time before demand is made upon him for payment thereof, that he desires to have the amount of such assessment apportioned, Ib., Sec. 9.

said city or town council shall apportion the same into three equal parts, with interest thereon from the date of the apportionment, to the annual tax of said estate for the three years next ensuing; and all assessments laid upon real estate for any of the causes mentioned in this law, which shall remain unpaid after the same becomes due or payable, shall draw interest from the time when the same became due or payable until the payment thereof.

Ib., Sec. 10.

1036. (688.) Remedy of party aggrieved. — Any party aggrieved by the doings of such city or town council may apply by petition to the circuit court for the county in which the estate is situated at any term thereof, within one year after the passage of the order or after the proceedings upon which the application is founded; and after due notice to the city or town against which the petition is filed, a trial shall be had at the bar of the court in the same manner in which other civil causes are there tried by the jury, and if either party requests it, the jury shall review the place in question: Provided, That if the municipality shall bring suit to enforce a lien in the premises within such year, the defendant shall make his objections to the order or proceedings aforesaid as defences to such suit.

Ib., Sec. 11.

1037. (689.) Costs and lien in such proceedings.—If the jury shall not reduce the amount of the assessment complained of, the respondent shall recover costs against the petitioner, which costs shall be a lien upon the estate, and be collected in the same manner as the assessment; but if the jury shall reduce the amount of the assessment, the petitioner shall recover costs, and all assessments shall be a lien upon the estate for one year after the final judgment in any suit or proceeding where the amount or validity of the same is in question, and be collected in the same manner as original assessments.

Ib., Sec. 12.

1038. (690.) Assessment of leasehold.—When an assessment is made upon an estate, the whole or any portion of which is leased, the owner of the estate shall pay the assessment and may thereafter collect of the lessee an additional rent for the portion of the estate so leased, equal to ten per centum per annum on that portion of the whole sum so paid which the leased portion bears to the whole estate, after deducting from the whole sum so paid any amount he may have received for damages to the estate above what he has necessarily expended on such estate by reason of such damages.

1039. (691.) Acquisition and enforcement of lien.—In all cases mentioned in this chapter in which the municipality

shall be entitled to liens on land, such liens for improvements, assessments, work done and materials furnished, or either, may be acquired and enforced in the manner provided for the acquisition and enforcement of liens upon real property provided for by Chapter V, Title VII, Lien, Division II, of these General Statutes. The owner shall also be personally liable for the said value. In case the land belongs to an infant, married woman, or person non compos mentis, suit in equity shall be brought to enforce the lien. Service in such suit shall be made on such defendant and the court shall appoint a guardian ad litem for such defendant as in other cases.

1040. (692.) Condemnation of lands.—The city or town council may provide by ordinance for the condemnation of lands and their appurtenances and the acquisition of the same by the municipality under the power of eminent domain, whenever the acquisition thereof is necessary to the exercise or performance of any power or duty conferred or imposed on the municipality by this chapter, and the proceedings for such condemnation shall be the same as provided by general law for condemnation of lands for public purposes.

1041. (693.) Wharves, vessels, bridges, ferries, fires, improvements.—The city or town council shall have power to construct wharves, quays and docks; to regulate wharfage, dockage, and the moorings and anchorage of vessels within the corporate limits, unless otherwise provided by law; to construct bridges, establish ferries, and fix the rates of ferriage and tolls; to erect all necessary public buildings and to control and dispose of the same as the interests of the city or town may require; to make and sink wells, erect pumps, dig drains; to pass all necessary laws to guard against fires and to insure the sweeping of chimneys; to provide for the lighting of streets of the city or town; to inclose and improve such public squares or parks as may adorn the city or town, and to improve and beautify the public cemetery for the burial of the dead; and to do and perform all such other act or acts as shall seem necessary and best adapted to the improvements and general interest of the city or town.

Ch. 1688, Acts 1869, Sec. 15.

1042. (694.) Markets.—The city or town council shall have power to establish market houses or places, and to require each and every person who may have for sale any fresh meats or fresh fish to bring the same into the said markets so established, and offer such for sale only in such markets, and to make such police and sanitary regulations in regard to such markets and the sale of fresh meats and

Ch. 3024, Acts 1877, Sec. 4.

fresh fish therein as they may deem reasonable and just, and to impose such pains, penalties and forfeitures as may be needed to carry such regulations into effect.

Jacksonville, City of v. Ledwith, 26 Fla., 163, 7 So. Rep., 886.

Ibid.

1043. (695.) Provisions, bread, liquors, weights and measures, gun-powder, etc.—The city or town council shall have the power to require all persons bringing fresh provisions of any kind into the town or city to exhibit them for sale at stated hours; to establish and regulate the weight and assize of bread, the inspection of any provisions brought from the country to said market, for sale there, the gauging of liquors, the measurement and weighing of any produce or merchandise and the storing of gun-powder, and all naval and military stores, not the property of the United States, nor the State of Florida.

Ch. 3163, Acts 1879, Sec. 1.

1044. (696.) Powers as to bar rooms, public amusements, hotels, livery stables, etc.—The city or town council shall have power to regulate and restrain all tippling, bar rooms and all places where beer, wine or spirituous liquor of any kind is sold at retail, or to be drank upon the premises where sold, billiard saloons, ten pin alleys, theaters or public halls and all places used for public exhibitions, games, or amusements of any kind, and taverns, hotels and other houses for public entertainment; to require all such places to be kept and used subject to such reasonable regulations as the council may prescribe; to require all keepers of such places to procure from the city or town a license for keeping the same, under such pains, penalties and forfeitures as the council may prescribe.

The city or town council shall have power to regulate the use of all carts, drays, wagons, hacks, omnibuses, hand carts, and every description of vehicles which may be kept for hire, and all livery stables, and to require the same to be licensed, and the conveyances or horses numbered.

Ibid.

1045. (697.) Powers as to houses of ill fame and gambling.—The city or town council shall have the power to suppress and prohibit all houses of ill fame, lotteries and all games or devices in the nature of lotteries, gambling and gaming houses, and to authorize the destruction of all instruments or devices used for lotteries or for the purpose of gaming.

Ibid.

1046. (698.) As to keeping or running at large of animals.—The city or town council shall have power to regulate or prohibit the keeping in the corporate limits of the city or town, or the running at large within the said limits, of horses,

cattle, swine, sheep, goats, geese and other animals, and to impound the same and hold the same, and on notice to the owners to authorize the sale of the same or any portion thereof for the penalty imposed by any ordinance and the costs, fees and expenses of the proceeding; to license and to regulate the running at large of dogs and to authorize the killing of the same when running at large contrary to the provisions of any ordinances to that effect.

(Impounding animals: See Section 1105.)

1047. City council may have garbage removed. — The council of any city or town of this State, whether said city or town be incorporated under the general incorporation act, or under a special charter, is hereby authorized and empowered to enter into an agreement with any individual, company or corporation for the gathering and disposal of its waste, garbage, night soil, dead animals and other refuse of said city or town, upon such terms, and for such period of time not to exceed thirty years, as may be agreed upon between said city or town council and individual, company or corporation: Provided, That if such agreement involve a greater annual cost to said city or town than it is now paying for the same quality or amount of service, said agreement shall be ratified by a majority of votes of the free-holders of said city or town, and voting at an election to be held for that purpose: And Provided further, That if such election be held a copy of said agreement, together with a notice of said election, shall be published in a newspaper in said city or town for four consecutive weeks prior to said election.

Ch. 5258, Acts 1903, Sec. 1.

1048. (699.) Support of public schools, poor, etc.—The city or town council shall have the power to provide for the support of the poor, the infirm, and the insane, and to establish public schools, and to provide for their maintenance.

Ch. 1688, Acts 1869, Sec. 21.

1049. May prohibit sale of fireworks.—Any municipality in this State shall have the right to prohibit by ordinance, the sale within its limits of any such fireworks as may be deemed objectionable by the council of such municipality.

Ch. 4585, Sec. 1, Acts 1897.

1050. (700.) To provide for election of officers. — The city or town council shall have the power to provide for the election by the qualified voters of the city or town of a treasurer and assessor and a collector of city or town taxes, and such other executive officers as the council may deem expedient, who shall continue in office for one year, or until their successors are elected and qualified: Provided, however, That it shall be lawful for the city or town council of any city or town to confer upon any qualified person the two

Ch. 1688, Acts 1869, Sec. 24.

offices of marshal and collector of taxes or the two offices of clerk and treasurer, or the offices of clerk, assessor and treasurer.

Ib., Sec. 28.

1051. (701.) To regulate compensation of officers.—The city or town council shall have power to regulate and fix the compensation of the several municipal offices.

Ch. 3477, Acts 1883, Sec. 1.

1052. (702.) To impose and collect taxes.—The city or town council shall have power to raise by tax and assessment upon all real and personal property, and by license on professions, business and occupations carried on within the corporation, all sums of money which may be required for the improvement and good government of the city, and for carrying out the powers and duties herein granted and imposed; and to enforce the receipt and collection of the same in the manner now provided by the laws of the State for the assessment and collection of State taxes and licenses.

Assessment of taxes.—City of Pensacola v. Bell, 22 Fla., 469. Assessment of property of railroad company.—Pensacola v. L. & N. R. R. Co., 21 Fla., 492. Assessment and collection of taxes to pay bonds.—Sullivan v. Walton, 20 Fla., 552. Legislature may legalize assessment.—City of Jacksonville v. Bennett, 20 Fla., 525. Sale of lands for taxes and tax deed.—Florida Savings Bank v. Britton, 20 Fla., 507. Prohibited from levying taxes for other than the purposes of its own government.—Murphy v. The City of Jacksonville, 18 Fla., 318.

Ch. 3477, Acts 1883, Sec. 2, Const. 1885.

1053. (704.) Town valuation not to exceed State.—The city or town may make its own assessment of property for taxation, but the valuation of property by the municipality shall not exceed the last valuation thereof by the State for taxation. The total taxes levied upon any property by any municipal corporation in any one year shall not exceed one per cent. upon such State valuation; but this provision is not to be so construed as to prevent the said corporation from levying sufficient tax to meet the payment of interest on its outstanding bonds, and to provide for the payment of the principal thereof when the same shall become due, or from levying such taxes for special purposes, or from making such special assessments of property as are in this chapter specified.

Ch. 3605, Acts 1885, Sec. 1.

1054. (705.) Special tax for water works and fire protection.—Every city and town is empowered to levy and collect a special tax annually for water works and fire protection upon all property within the corporate limits of any such city or town: Provided, That it shall require a two-thirds vote of the city or town council to levy said tax, and that thirty days' notice of the intention to levy said tax shall be given by publication in some newspaper published in said

town once in each week: Provided, further, That said tax shall not exceed five mills on the State valuation of the property within such corporation.

1055. (706.) Collection of and sale for taxes.—The tax collector of any city or town shall proceed substantially in the same manner in the collection of taxes and sale of property for the non-payment of taxes as State tax collectors. Ch. 3681, Acts 1887, Sec. 53.

1056. (707.) Advertisement of tax sales.—The tax collector of any incorporated city or town, if there be no newspaper published within the said city or town, shall advertise the sale of any lands levied on for taxes by three written notices posted in three public places in said city or town. Ch. 2079, Acts 1877, Sec. 2.

1057. (708.) Limitations of appropriations and warrants. It shall not be lawful for the government of any city or town to make appropriations, in any one year, for a greater amount than is allowed to be collected by taxation; and it shall not be lawful for any officer of a municipal government to issue a warrant on the treasurer except in payment of an appropriation. Ch. 3477, Acts 1883, Sec. 2.

Cannot create indebtedness by offering reward for apprehension and conviction of criminal violating State law.—Murphy v. City of Jacksonville, 18 Fla., 318. No implied obligation to compensate volunteer fireman.—The City of Jacksonville v. Aetna Steam Fire Engine Co., 20 Fla., 100.

1058. (709.) Entry and endorsement of refusal or failure to pay warrants.—The treasurer of any city or town shall enter in a book to be kept for that purpose the fact of the refusal to pay, or non-payment of any warrant or order which may be presented to him as such treasurer, and to include in such entry a description of the warrant or order, by whom presented, the date of presentation and his reason for such refusal or non-payment; and he shall at the request of the person presenting the same, endorse on the back of such warrant or order the fact of such refusal or non-payment, and reason therefor. Ch. 3465, Acts 1883, Sec. 1.

1059. (710.) Book to be furnished treasurer.—The city or town council shall furnish the treasurer with a book for the purposes mentioned in the preceding section, which shall be open to the inspection of all citizens. Ib., Sec. 2.

1060. (711.) Power to borrow money.—The city or town council shall have power, with the approval of a majority of the registered voters of the city or town, then residing therein, who own real estate therein and have paid their taxes for the year last due thereon, and actually voting, to Ch. 3024, Acts 1877, Sec. 5.

borrow money or contract loans for the use of the city or town, whether from bodies corporate or individuals residing in or out of the State, and to pledge the funds, credit and property of the corporation for the redemption of such loan or loans.

Ib., Sec. 6.

1061. (712.) Power to issue bonds.—The city or town council shall have power, with the approval of two-thirds of the registered voters of the city having the qualifications specified in the preceding section, and actually voting, to issue bonds bearing such rates of interest as may be deemed best by the council, not exceeding the legal rate of interest in this State, whenever it may be necessary for the purpose of building or repairing the public works of the city, the widening and extension of streets or parks, payment of existing indebtedness of the city, or any other municipal purpose.

Sullivan v. Walton, 20 Fla., 552.

Ib., Sec. 7.

1062. (713.) Issuance of bonds to be submitted to election.—Before any such bonds are issued, the question of issuing them, as well as the amount to be issued, shall be submitted to the electors of the city having the qualifications specified in said section, in such manner and after such public notice as may be deemed necessary by the city council; and should two-thirds of the votes actually cast by said electors be in favor of issuing the bonds and the amount proposed to be issued, in that event it shall be lawful for them to be issued, otherwise not.

Ch. 3476, Acts 1883, Sec. 5.

1063. (714.) Limit of amount of bonds.—No city or town shall issue bonds to exceed five per cent. of the assessed value of the real and personal property within its incorporated limits: Provided, That this limitation shall not operate to prevent the issue by any city or town of additional bonds, which, with the existing bonded indebtedness of such city or town, shall not exceed five per cent. of the assessed value of the real and personal property within its corporate limits.

(See Ch. 5465, Appendix.)

Ch. 3024, Acts 1877, Sec. 6.

1064. (715.) Form of bonds.—Such bonds shall have the seal of the corporation, and shall be signed by the mayor and city clerk, and shall be payable at such time and place as the city council may designate.

Ch. 1688, Acts 1869, Sec. 20.

1065. (716.) Tax for bonds.—It is hereby made the duty of the city council to assess and collect such taxes from the

citizens, and upon the property within the city, as shall be necessary for the payment of interest upon, as well as the final payment of said bonds: Provided, however, That all property shall be taxed upon the principle established by State taxation.

1066. May issue coupon bonds for refunding bonded indebtedness.—Any city or town of the State of Florida, for the purpose of extending the time of payment of any bonded indebtedness, which from its limits of taxation such city or town is unable to pay at maturity, or when it appears to the trustees or council of such city or town, for the best interest of the same, said city or town is hereby authorized and empowered, through its council or trustees, to compound, settle, refund and retire any existing bonded indebtedness lawfully made and undertaken for the same by authority of law, and for this purpose shall have the power, by resolution at any regular meeting introduced and passed, to issue its negotiable coupon bonds of such city or town, and such bonds shall be in the denomination of one hundred dollars ($100.00), five hundred dollars ($500.00), or one thousand dollars ($1,000.00), bearing interest at a rate not exceeding six per centum per annum, such interest to be paid semi-annually at such place or places as said council or trustees may elect: Provided, however, That no bonded indebtedness of such city or town shall be so compounded, refunded or extended unless such bonded indebtedness is a valid and binding obligation of such city or town; which resolution shall also state the amount of existing bonded indebtedness to be refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of maturity, the rate of interest they shall bear, and the place or places of payment of principal and interest. Ch. 4712, Acts 1899, Sec. 1.

1067. Council may levy tax to pay principal and interest. The said council or trustees are hereby authorized, empowered and required to annually levy a tax upon all real and personal property situated within the limits of the city or town, not to exceed fifty cents on the one hundred dollars of the assessed value of such property in any one year, to pay the semi-annual interest, and to pay not less than two per centum annually on the principal of said bonds, besides the expenses of assessing and collecting the same; and no bonds shall be issued under the provisions of this law unless a levy as hereinbefore provided shall have been made sufficient to pay the first year's interest and two per centum of the principal of the said bonds: Provided, however, That nothing herein contained shall be construed to authorize such Ibid.

city or town to levy any tax in excess of that authorized by the Constitution and laws now in force and the provisions of this and the preceding section: Provided, further, That the bonds so issued shall not bear a rate of interest greater than the bonds refunded: Provided, however, That any action taken under this chapter by any council, trustee or trustees, shall be of no validity unless previous notice of the intention to consider such matter has been published once each week for at least four weeks in some paper of general circulation published in said city or town, and when no newspaper is published therein, in some newspaper published in the nearest city or town thereto in the same county, the said notice to state also the time and place of the meeting at which the matter is to be considered.

Ch. 1688, Acts 1869, Sec. 25.

1068. (717.) Mayor to see that ordinances are executed and to appoint police.—It shall be the duty of the mayor to see that the ordinances of the city or town council are faithfully executed; and he is authorized, with the consent of the council, to organize and appoint such police force as may be deemed necessary to insure peace, good order and observance of law within the municipal limits, the compensation of the said police to be fixed and regulated by the city or town council.

Ibid.

1069. (718.) To cause arrest of offenders and to try them.—The mayor is further authorized and empowered by his mandate directed to the city or town marshal to have brought before him, at such time and place within the corporate limits as he may designate, any person or persons charged with a breach of the city or town ordinances, and he is authorized to require the attendance of witnesses, to administer oaths, to inquire and examine into the truth or falsity of such charge, to determine from the evidence the guilt or innocence of the accused and fix the penalty within the limits prescribed by this chapter, and to enforce the same.

1070. (719.) Clerk and marshal may take affidavits and issue warrants.—The clerk may administer an oath to and take the affidavit of any person charging another with an offence by breach of an ordinance, and may issue a warrant to the marshal to have the accused person arrested and brought before the mayor for trial. The marshal shall have power in the absence of the mayor and clerk from the police station to administer oaths to affidavits of complaints and to issue warrants for the arrest of persons complained against.

1071. May prevent sale of liquors in certain cases.—When the sale of spirituous liquors, wines or beer is wholly forbidden in any county or precinct pursuant to an election duly held for that purpose under the Constitution and laws of this State, then any city or town incorporated under the general or special laws of this State relating thereto, and situated in such county or precinct so voting against such sale, may pass such reasonable ordinance or ordinances to prevent or suppress illegal sales of such intoxicants, while such sale is so forbidden, and affix such reasonable penalty or penalties thereto for the violation thereof, as such city or town council shall prescribe.

Ch. 4931, Acts 1901, Sec. 1.

1072. (720.) Contracting of territorial limits.—If any incorporated city or town shall desire to contract its territorial limits by excluding from its corporate limits and jurisdiction any portion of its incorporated territory it shall be lawful so to do in the following manner: The council of such city or town, by ordinance, shall declare its desire to exclude such district, describing the same by metes and bounds, and shall call an election of the registered voters of the remaining district of the said city or town to approve or disapprove of the said ordinance. Each election shall be held separately in the respective districts, but upon the same day; and thirty days' public notice shall be given of the time, purpose and place of said election, by proclamation issued by the mayor, which proclamation shall contain a copy of said ordinance. If two-thirds of the registered voters actually voting in each shall approve of such ordinance, the council shall thereupon, by ordinance, declare the new limits of the city or town, excluding therefrom the portion so excluded, and cause the said ordinance, together with the previous ordinance aforesaid, the mayor's proclamation aforesaid, and certificate of the result of such election, to be recorded in the records of the council, and also in the clerk's office in the county where such city or town is situated.

Ch. 3163, Acts 1879, Sec. 2, amended by Ch. 5197, Acts 1903, Sec. 1.

1073. Idem.—When any incorporated town (or city) containing less than one hundred and fifty qualified electors shall, owing to extent of territory, have embraced within the limits any lands which may from distance or other cause be virtually or commensurately excluded from the benefits of such municipal organization, it shall be lawful for any owners of such lands or three-fourths of them desiring to have the same excluded from such corporation limits and jurisdiction, to apply by petition to the circuit court in and for the county in which said incorporated town is situated, setting forth in said petition the limits of such incorporated

Ib., Sec. 1.

town as then existing and the grounds of his or their objection to be included within the limits of such corporation; whereupon the circuit court shall order notice of said application to be served upon the mayor of said town or city and appoint a day for the hearing of such application.

If upon the hearing of said application the said court shall sustain the said objection, the said tract or tracts of land shall be so excluded. Such petition may be heard and determined by said court in term time or vacation, and any question of fact may be determined by said court without a jury.

Ibid.

1074. (721.) Effects of exclusion.—Whenever any portion of any city or town is excluded as aforesaid, such portion and the citizens thereof shall be thereby forever released from all debts, duties, or liabilities of the said city or town; and all public property, both real and personal, whether situated in the district so excluded or in the remaining district, and all rights and franchises belonging to such city or town at the time of exclusion, shall remain and be the property of such city or town.

Ibid, Sec. 2.

1075. (722.) Extension of territorial limits.—If any incorporated city or town shall desire to change its territorial limits by the annexation of any unincorporated tract of land lying contiguous thereto and within the same county, it shall be lawful so to do in the following manner: If such tract contains less than ten registered voters, the council of said city or town shall, by ordinance duly passed and approved as provided by law, declare its intention to annex such tract of land to said city or town at the expiration of thirty days from the approval of said ordinance, which said ordinance shall thereupon be published once a week for four consecutive weeks in some newspaper published in such city or town; or if no newspaper is published in said city or town, then at least three printed copies of said ordinance shall be posted for four consecutive weeks at some conspicuous place in said city or town, and three copies in like manner in the district to be annexed. If at any time before the expiration of the thirty days, any ten registered voters of said city or town, or any two owners of real estate in the district so proposed to be annexed, shall object to such annexation, they may apply by petition to the circuit court in and for the county in which said city or town is situated setting forth in said petition the proposed proceedings of the said city or town, and the grounds of their objection thereto; whereupon the said circuit court shall order notice of said application to

be served upon the mayor of said city or town, and appoint a day for the hearing of said application; and all further action in the premises by the said city or town shall thereupon be stayed until the further order of the said court. If, upon the hearing of the said application, the said court shall sustain the said objection, the said tract of land shall not be annexed; otherwise the said application shall be dismissed and the said tract of land shall be annexed to the said city or town. Such petition may be heard and determined by said court either in term time or in vacation, and questions of fact may be determined by such a court without a jury, but each party may demand a jury if they so desire. If no objection is filed and notice served as aforesaid within the said thirty days, the said city or town may proceed by ordinance to annex the said tract of land and to redefine the boundary lines of the said city or town so as to include therein the said tract of land. If the tract of land so proposed to be annexed contains ten or more registered voters, the ordinance proposing to annex said tract of land shall be submitted to a separate vote of the registered voters of the said city or town and of said tract of land. Such election shall be called and conducted, and the expense thereof paid by the corporate authorities of said city or town; and the said tract of land shall not be annexed unless such annexation is approved by a majority of two-thirds of the registered voters actually voting at such election in said district and in said city or town.

1076. (723.) Annexation of one municipality to another. If any incorporated city or town desires to annex or to be annexed to any other incorporated city or town lying contiguous thereto, such city or town shall so declare by ordinance duly passed and approved, and transmit a copy of said ordinance to the mayor of the city or town which it desires to annex or be annexed to. The mayor of such city or town shall submit the said ordinance to the council of said city or town, and if the same is affirmed and concurred in by the said council, the mayor shall notify the mayor of the city or town transmitting the same; whereupon each city or town shall call an election of their respective citizens, as provided in Section 1072 of this Revision, and if a two-thirds majority of the registered voters actually voting in each city or town approve of said annexation, the same shall be duly consummated and the two cities or towns shall be consolidated under one municipal government under the name of the city or town to which the other city or town is annexed, and the corporate authorities of the latter shall cause all the pro- Ib., Sec. 8.

ceedings had as aforesaid to be duly recorded in the clerk's office of the county wherein such city or town is situated.

(See Ch. 5464, Appendix.)

Ibid.

1077. (724.) Effects of annexation.—All public property, rights and franchises theretofore belonging to the city or town so annexed shall thereafter belong to the city or town annexing the same, which shall also assume and be liable for all the debts and obligations of the city or town so annexed; and the property and inhabitants of any city or town so annexed shall be equally liable for all debts and obligations, and subject to every species of taxation imposed upon the original inhabitants of the city or town to which they are annexed.

Ch. 4600, Acts 1897, Sec. 1.

1078. May establish, lease or purchase electricity or gas plant.—Any city or town may, under the limitations of this chapter, construct, purchase, lease or establish and maintain within its limits one or more plants for the manufacture or distribution of gas or electricity for furnishing light for municipal use, and for the use of such of its inhabitants as may require and pay for the same as herein provided. Such plants may include suitable land, structures, easements, water privileges, stations, gasometers, boilers and engines, dynamos, machinery, pipes, conduits, hose, conductors, burners, lamps and other apparatus and appliances for making, generating, distributing and using gas or electricity for lighting purposes.

Ib., Secs. 2 and 3, consolidated and Revised.

1079. How authority exercised.—No city or town shall exercise the authority conferred in Section 1078 until after a vote that it is expedient to exercise such authority, shall have passed its city council by a two-thirds vote of the members of said city or town council at a meeting duly called and held for that purpose, and received the approval of the mayor, and thereafter have been ratified by a majority of the voters voting thereon at an annual or special municipal election to be called and held for that purpose, and the result of such vote duly declared by the clerk of the said town or city council, and recorded in the minutes of such town or city.

Ib., Sec. 3.

1080. Limitation upon holding elections.—When a vote has failed of passage as provided in the preceding section, no similar vote shall be taken until after the expiration of one year thereafter.

Ib., Sec. 4.

1081. Bonds, how issued and disposed of.—Any city or town establishing or purchasing a plant within its limits, as provided in this chapter, or reconstructing, extending or

enlarging the same, as provided in Section 1082, may pay for the same by the issue of bonds, payable in a term of not exceeding thirty years and bearing interest at a rate not exceeding seven per cent., which shall not be disposed of for less than par and accrued interest; and the indebtedness thereby created shall not be included in the limit of indebtedness of such city or town provided by law; but such bonds shall not be issued until a vote authorizing the same has been taken and passed as provided for in Section 1079; and the whole amount of bonds so issued by a city or town and outstanding shall not exceed at their par value the amount of seven per cent. of the total valuation of the real and personal property within the limits of said city or town, according to the last preceding valuation of the same made by said city or town. The interest on such bonds and a sinking fund to meet the same at maturity shall be provided for by ordinance of the city or town council.

1082. Reconstruction and extension of plant.—Any city or town owning a plant for the manufacture or distribution of gas or electricity may reconstruct, extend or enlarge the same, but no such reconstruction, extension or enlargement beyond the necessary and ordinary maintenance, repair and replacement thereof, except such increased appliances for the manufacture and distribution of gas and electricity as may be necessary to furnish the same to the takers, shall be undertaken or made except by the vote provided by Section 1079 in the case of the issue of bonds. Ib., Sec. 5.

1083. City or town may establish regulations for furnishing light.—Any city or town having obtained a plant for the purpose as provided in this chapter, may manufacture, generate and distribute gas and electricity for furnishing light for municipal use, or for the use of its inhabitants, under such regulations as it may establish. No city or town shall be compelled to furnish gas or electricity to any person or corporation except upon the order of the gas and electric light committee of such city or town. Any person or corporation aggrieved by the refusal of any city or town supplying gas or electricity under the authority of this chapter to furnish the same, may appeal to such committee setting forth in such appeal what is required of the city or town in such detail as the committee may require. Ib., Sec. 6.

1084. Books and accounts.—The books and accounts pertaining to the business authorized by this chapter shall be kept in a form to be prescribed by the board of gas and electric light committee. Ib., Sec. 7.

Ib., Sec. 8.

1085. City or town to fix price to be charged.—The price to be charged for gas or electricity to persons and corporations shall be fixed by the city or town council, and shall not be changed oftener than once in three months.

Ib., Sec. 9.

1086. Purchase by city or town of established plant.—When any city or town shall decide as hereinbefore provided, to establish a plant, and any person, firm or corporation shall at the time of the vote required for such decision be engaged in the business of making, generating or distributing gas or electricity for sale for lighting purposes in such city or town, such city or town shall, if such person, firm or corporation shall elect to sell and shall comply with the provisions of this chapter, purchase of such person, firm or corporation before establishing a public plant, such portion of his, their or its gas or electric plant, and property suitable and used for such business in connection therewith, as lies within the limits of such city or town. If in such city or town a single corporation owns or operates both a gas plant and an electric plant, such purchase shall include both of such plants, but otherwise such city or town shall only be obliged to purchase the existing gas plant or plants, if it has voted only to establish a gas plant, and shall only be obliged to purchase the existing electric plant or plants if it has only voted to establish an electric plant. If the main gas works in the case of a gas plant, or the central lighting station, in the case of an electric light plant, lie within the limits of the city or town which has voted to establish a plant as aforesaid, such city or town shall purchase as herein provided the whole of such plant and property used in connection therewith, lying within its limits, and the price to be paid therefor shall be its fair market value for the purposes of its use, no portion of such plant to be estimated, however, at less than its fair market value for any other purpose, including as an element of value the earning capacity of such plant, based upon the actual earnings being derived from such use at the time of the final vote of such city or town to establish a plant, and also any locations or similar rights acquired from private persons in conection therewith, plus the damages suffered by the severance of any portion of such plant lying outside of the limits of such city or town, and minus the amount of any mortgage or other incumbrance or lien to which the plant so purchased, or any part thereof, may be subject at the time of transfer of title; but such city or town may require that such plant and property be transferred to it free and clear of any mortgage or lien, unless the gas or electric committee of such city or town shall otherwise determine.

Such value shall be estimated without enhancement on account of future earning capacity, or good will, or of exclusive privileges derived from rights in the public streets. When any capital has been paid in, in property instead of cash, the valuation placed upon such property in estimating it as paid in capital shall not be conclusive in estimating its value under the foregoing provisions, but may be disputed by the city or town, and if shown to have been excessive, may be reduced by the authority fixing the price of the plant and property as hereinafter provided.

1087. Where part of plant is outside of town limits.—If the main gas works or central lighting station of such a plant do not lie within the limits of the city or town which has voted as aforesaid, then such city or town, shall only purchase that portion of such plant and property which lies within its limits, paying therefor upon the basis of value above established, but without allowance of damages on account of severance of plant. No city or town shall be obligated by this section to buy any apparatus or appliances covered by letters patent of the United States or embodying a patentable invention unless a complete right to use the same and all other apparatus or appliances necessary for such use within the limits of such city or town, to such extent as such city or town shall reasonably require such right, shall be assigned or granted to such city or town at a cost as low as the cost of such right would be to the person, firm or corporation whose plant is purchased. Ib., Sec. 9.

1088. Enforcing obligation of city or town.—Any persons, firm or corporation, desiring to enforce the obligation of any city or town under Section 1086 to purchase any property, shall file with the clerk of such city or town within thirty days after the passage of the final vote whereby such city or town shall have decided to establish a plant, a detailed schedule describing such property and stating the terms of sale proposed. If the parties fail to agree as to what shall be sold, or what the terms of sale and delivery in accordance with the provisions of this chapter shall be, either party may within sixty days after the filing of the schedule apply by petition to the circuit court having jurisdiction in said county, setting forth the facts and praying an adjudication between the parties; and thereafter such court shall, after giving both parties an opportunity to be heard, appoint a commission or jury as now provided by law in matters of eminent domain, and the exercise of the right thereof, who shall give the parties an opportunity to be Ib., Sec. 10.

heard, and shall thereafter determine by their award or verdict what property, real or personal, including rights and easements, shall be sold by the one and purchased by the other in accordance with the provisions of this chapter, and what the price, time and other conditions of the sale and delivery thereof shall be. Such commission or jury shall file their award or verdict in the office of the clerk of the circuit court having jurisdiction, for revision or confirmation by said court.

Ib., Sec. 11.

1089. Aggrieved party may file with clerk of the circuit court.—Any party aggrieved by the award or verdict of the commission or jury may within fourteen days after its filing or within such longer time as the court may allow, file objections thereto with the clerk of said court and apply to the court for a hearing on such award or verdict relative to any matter of fact or law pertaining to the same, and thereupon the court shall make and render its final judgment in the premises after due notice to all parties in interest and an opportunity given to be heard in the premises. The judgment of the court upon said award or verdict shall be final and binding, and said court shall have jurisdiction as in equity to compel compliance therewith, and may also issue and enforce such interlocutory decrees and orders as justice may require. Any party aggrieved by the final judgment of the circuit court may have a writ of error as in common law cases to the Supreme Court of the State, subject to all rules and laws in force in this State relating to writs of error.

Ib., Sec. 12.

1090. When powers of owners cease.—Whenever the existing gas plant or electric plant of any person or corporation shall have been acquired by any city or town pursuant to the provisions of this chapter, the powers and rights of such person or corporation in relation to the manufacture and distribution of gas and electricity within the limits of such city or town, shall, from and after the date of such acquirement, cease and determine.

Ib., Sec. 13.

1091. General laws apply.—All general laws of the State of Florida, and all ordinances or by-laws of any city or town availing itself of the provisions of this chapter, relative to the manufacture, use, generation or distribution of gas or electricity, or the quality thereof, or plant or appliances therefor, shall apply to such city or town so far as the same may be applicable and not inconsistent with this chapter, in the same manner as the same apply to persons and corporations engaged in making, generating or distributing gas or electricity therein.

1092. No rights of cities impaired.—Nothing herein shall be construed to take away, restrict or impair any rights of any city, town or other authority which may now exist to revoke locations of wires, poles, conduits or pipes in, over or under their streets or ways: Provided, however, That no city or town, having within its limits the main gas works in the case of a gas plant or the central lighting station in the case of an electric plant, or the major portion of the wires, poles, conduits, or pipes used in connection with any such works or plants, shall, except for a violation of the terms or conditions upon which the same were granted, or for a violation of law respecting the exercise thereof, revoke any rights heretofore granted, or which may be hereafter granted, to any person or corporation engaged in the business of making, generating or distributing gas or electricity for sale or lighting purposes, after the passage of the vote of the city council or town council and the vote of the electors of such city or town, as provided for in Section 1079. Ib., Sec. 14.

1093. Stationary steam engineers to take out license in certain cases.—All cities over five thousand inhabitants are hereby granted express powers to pass and enforce all ordinances that will compel each and every stationary steam engineer to take out a license to carry on their said vocation, in such sum as the said cities may impose: Provided, The said sum shall not exceed the limits specified in the general revenue laws of the State of Florida. Ch. 5069, Acts 1901, Sec. 1.

1094. Not to apply to certain cases.—The provisions of the preceding section regarding the amount of license shall not apply to cities which operate under a special charter, when said charter grants the power to impose licenses without respect to the general revenue statute. Ib., Sec. 2.

1095. Appointment of inspectors.—Cities of over five thousand inhabitants may provide by ordinance for an inspector of boilers and an examiner of stationary steam engineers, to inspect steam boilers, except marine and locomotive boilers used on regular lines of railway, and shall regulate by ordinance the qualifications of the said inspectors and examiners, their terms of office, salary or fees, and all other matters and things connected with their said duties. Ib., Sec. 3.

1096. Inspector and examiner may be one person.—The office of inspector and examiner of stationary steam engineers may be combined in one person by ordinance. Ib., Sec. 4.

1097. Powers of examiner.—The said examiner of stationary steam engineers shall be empowered to require such Ib., Sec. 5.

qualifications of all stationary steam engineers aforesaid as would be reasonable in conserving public safety, and said examination shall be held at such times and places as may be required by ordinance.

Ib., Sec. 6.

1098. License to be exposed to public.—Licenses granted to stationary steam engineers shall be exposed in any public manner required by ordinance.

Ch. 5070, Acts 1901, Sec. 1.

1099. Cities and towns to fix rates and charges for water. The corporate authorities of any city, town or village, now or hereafter incorporated under any general or special law of this State, in which any individual, company or corporation has been, or may hereafter be, authorized by such city, town or village to supply water to such city, town or village and the inhabitants thereof, are empowered to prescribe by ordinance maximum rates and charges for the supply of water furnished by such individual, company or corporation to such city, town or village and the inhabitants thereof, such charges to be just and reasonable: Provided, That this section shall not be construed as to impair the validity of any valid contract heretofore entered into between any city, town or village and any person, firm or corporation for the supply of water to such city, town or village or its inhabitants. But this section shall not be held to validate any contract heretofore made.

Ch. 3748, Acts 1887.

1100. (726.) Other municipalities declared legally incorporated.—All cities and towns which now are and for ten years last past have been exercising municipal government are hereby declared legally incorporated.

Ch. 1885, Sec. 2.

1101. (727.) Acts made valid.—All acts and doings of cities and towns included in either of the last two foregoing sections, and of the government and officers of the same, done under any law of the State of Florida, are declared valid; and said municipal corporations and governments, and all the officers of the same, shall have the powers and privileges granted by said law, approved February 4, A. D. 1869, and all subsequent laws relating to municipal corporations and the governments of the same.

Ch. 3317, Acts 1881, Sec. 1.

1102. (728.) Proceedings to surrender franchise.—Any city or town incorporated under the laws of this State may surrender its franchise in the following manner: Upon petition of one-third of the registered voters of such city or town, the mayor shall issue a proclamation ordering an election to be held in such city or town on a day not less than

thirty nor more than sixty days from the issuance of the proclamation. Those wishing to vote in favor of a surrender shall have written or printed on their tickets the words, "For Surrender of the Franchise," and those wishing to vote against a surrender shall have written or printed on their tickets the words, "Against Surrender of Franchise." The election shall be conducted, and the returns canvassed, under such rules and regulations as the town or city council may prescribe. If two-thirds of the votes cast at such election shall be in favor of the surrender of such franchises they shall stand and be deemed surrendered from the thirtieth day after the election.

1103. (729.) Certificates of result of election.—It shall be the duty of the city or town council to cause to be entered upon the minutes of its proceedings, immediately after the result of said election is declared, a certificate or declaration of the result thereof, and they shall also transmit a certified copy thereof to the Secretary of State, and if the result is in favor of a surrender he shall give notice in two gazettes of such surrender and record such certificate in a book to be kept for that purpose. Ib., Sec. —.

1104. (730.) Payment of debts.—If such city or town, at the time of dissolution, shall owe any debt, any property or assets of such municipality which belonged thereto at the time of such dissolution, shall be subject to legal process for the payment of such debt; and, if it shall be necessary in order to pay any such debt, to levy any tax or taxes on the property in the territory or limits of the dissolved municipality, the same may be assessed and levied by order of the county commissioners of the county wherein the same is situated, and shall be assessed by the county assessor of taxes and be collected by the county tax collector, and be received and disbursed by the county treasurer. The proceedings in the assessment, collection, receipt and disbursements of such taxes shall be like the proceedings concerning county taxes as far as applicable.

1105. Impounding hogs or cattle.—No city or town in this State with less than five hundred bona fide inhabitants shall have authority or right to impound any hogs of residents who live without the corporation, and no city or town in this State with less than twelve hundred bona fide inhabitants shall have authority or right to impound any cattle of residents who live without the limits of its corporation. Ch. 4349, Acts 1895, Sec. 1, Consolidated. with Ch. 4190, Acts 1893, Sec. 1.

(For penalty for driving hogs or cattle into corporate limits: See Section 3387.)

Ch. 5191, Acts 1903, Sec. 1.

1106. May take census.—Whenever any city or town council of any city or town in the State of Florida shall deem it necessary for any purpose to ascertain the number of bona fide inhabitants of such city or town, such city or town council shall by resolution declare the same to be the sense of said body, and whereupon they shall by resolution appoint some suitable person to do such work, and declare his compensation for such work.

Ib., Sec. 2.

1107. Under regulations of council.—Such census shall be taken in such manner, and under such regulations as the council may determine.

Ib., Sec. 3.

1108. Census taken, filed with clerk.—Whenever the said census shall be completed, the same shall be filled with the clerk of said city or town, and shall thereupon become legal evidence of the number of bona fide inhabitants of said town or city.

TITLE XI.

CHAPTER I.

OF THE STATE BOARD OF HEALTH.

Ch. 3839, Acts 1889, Sec. 1.

1109. (760.) Governor to appoint.—The Governor shall appoint three discreet citizens of the State of Florida, who shall be confirmed by the Senate, and who shall, after taking and subscribing an oath before some person competent to administer oaths, faithfully to perform the duties of their offices, constitute the State Board of Health.

Ch. 4345, Acts 1895, Sec. 1.

1110. Regular meeting, times of.—The regular meeting of the State Board of Health shall be on the second Tuesday of February of each year.

1111. (761.) Governor may convene board.—It shall be the duty of the members of said board to convene upon the call of the Governor at such time and place as he may direct.

Ch. 3839, Acts 1889, Sec. 2.

1112. (762.) Board to elect president and health officer. It shall be the duty of the said board, at their first meeting, to elect one of their number as president of said board. At

the same meeting it shall be the duty of said board to designate and employ a physician, who shall be an expert in diagnosis of yellow fever, small-pox, cholera and other infectious diseases, and who must be a person of recognized ability and skilled in hygiene and sanitary science, and a graduate physician of a recognized and reputable medical college, which said person shall be known as the State Health Officer. The State Health Officer shall be the executive officer of the board and secretary of the same, and shall hold the office for the term hereinafter specified, unless removed by the board for just cause.

1113. (763.) Terms of office.—The term of office of each member of the board of health shall be four years from the date of his appointment, or until his successor is appointed and qualified, and the term of employment of State Health Officer shall be for four years from the date of his appointment, or until his successor is appointed and qualified: Provided, That should any member of the said board be and remain absent from the State for ten days, after any disease has been declared epidemic, the Governor may declare his office vacant, and proceed to fill the same by appointment; and should the health officer be and remain absent from the State for five days after his attention has been called to the presence of any disease in the State, the board of health may declare the office vacant and proceed to fill the same by designation and employment of a suitable person to perform the duties thereof. Ib., Sec. 3.

1114. (764.) Physicians to make certain reports.—It shall be the duty of every practicing or licensed physician in the State of Florida to report immediately to the president of the board of health, by telegram or in the most expeditious manner, every case of yellow fever, small-pox or cholera that comes within his practice, such telegram to be paid for out of the funds provided for the expenses of said board of health. Ib., Sec. 4.

1115. Duties of president and health officers concerning investigation and quarantine.—It shall be the duty of the president of the board of health immediately upon the receipt of information that there is any case of yellow fever, small-pox, cholera or hydrophobia in any portion of this State, to order the State Health Officer by telegram, if he is not at hand, to proceed immediately to said place, and there to investigate the said reported case or cases of yellow fever, small-pox, cholera or hydrophobia and to report to the said Ch. 4348, Acts 1895, Sec. 1.

president by telegram the result of his said investigation: Provided, That in cases of hydrophobia the State Health Officer may be represented by any authorized agent or agents of the State Board of Health, and said State Health Officer shall have power, and it shall be his duty to declare said infected point and animal or animals to be in quarantine, and to place any and all such restrictions upon ingress and egress of animals or persons thereat as, in his judgment shall be necessary to prevent a spread of the disease from the infected locality or animal or animals; and it shall be the duty of the State Health Officer, when he shall have declared any city, town or other place, or animals to be in quarantine to so control the population or animals of said city, town or other place, and make such disposition of the same as shall in his judgment appear best to protect that population and at the same time prevent a spread of the infection, or running at large of animals infected with rabies, among the same. The sheriff and constables of the several counties of this State and the police officers of all the cities and towns of this State shall be under the control of the said State Health Officer to enforce and carry out any and all quarantine regulations that he may prescribe, which said regulations shall be immediately published in the most practicable manner in the several counties, cities, towns or other places where quarantine may be established; and said State Health Officer shall make immediate report of his actions and doings in the premises to the president of the board of health, and from time to time, so long as quarantine shall continue.

Ch. 3839, Acts 1889, Sec. 10.

1116. (770.) Duty of Governor to furnish means of enforcing quarantine.—It shall be the duty of the Governor of this State, whenever called upon by the State Health Officer so to do, to furnish the said officer with all requisite means to enforce whatever quarantine regulations it may be necessary in his judgment to prescribe, including such armed force from the militia of the State, as, in the judgment of the Governor, may be required, upon information furnished by said officer.

Ch. 4345, Acts 1895, Sec. 2.

1117. Duties of State Health Officer.—The State Health Officer, under the direction of the State Board of Health, shall have the general administrative and executive control of all the maritime and domestic quarantine systems of the State. He shall have the power to make arrests without warrants for any violation of the quarantine rules and regulations of the State Board of Health after they have been duly promulgated. He shall have power to deputize sani-

tary agents for that purpose. In all such cases the person or persons arrested for violating the quarantine and sanitary rules aforesaid, shall be surrendered without delay to the custody of the nearest sheriff and formal complaint made against him, her or them, in accordance with law.

1118. Quarantine, etc.—No quarantine regulations of commerce or travel (sea coast or inland) shall be instituted or operated by any port, place or county of this State, against any other port, place or county in this or any other State or any foreign country except by authority of the State Board of Health. Ib., Sec. 3.

1119. (771.) Regulations concerning railways and vessels. The board of health shall have power, and it shall be their duty at all times, to impose upon all railway and navigation companies, and upon all individuals who may own or operate steamships or other vessels plying between any of the West Indian, South American, or any other foreign ports and the ports of the State of Florida, such restrictions and regulations as to inspection, quarantine and sanitary rules as in their judgment may be necessary to protect the health of the people of this State, and which may not be in conflict with the acts of Congress already passed, or that may hereafter be passed, and do not amount to an absolute interruption of commerce with said foreign ports: Provided, That whenever any case of yellow fever, small-pox, cholera or other infectious disease shall appear, or be developed among the passengers, officers or crew of any such steamship or other vessel, said steamship or other vessel shall be ordered in quarantine for such time and under such regulations as may be prescribed by said board of health: Provided, further, That should said board of health at any time be convinced that yellow fever, small-pox, cholera or other infectious disease exists in any foreign port, in such form that the landing of any steamship or other vessel hailing from said infected foreign port, at any of the ports of Florida, will put in peril the health of the people of said State, it shall be the duty of said board to put all and any such steamships or vessels, their crew, passengers and cargo, in quarantine for such time and under such rules and regulations as may be prescribed by said board of health: Provided, further, That said board of health shall charge and receive from such vessels undergoing inspection or sanitation, as provided in this section, such fee or fees as said board may prescribe. Ch. 3839, Acts 1889, Sec. 11.

1120. General powers of board.—The State Board of Health shall have the general supervision of the public health of the State of Florida, and shall have power to make, Ch. 4348, Acts 1895, Sec. 2, amending Sec. 772, Rev. Stats. 1892.

promulgate and enforce such rules and regulations as may be necessary for the preservation of the same; and to prevent the importation or spread of hydrophobia.

Ch. 3839, Acts 1889, Sec. 12.

1121. (773.) Visits by health officer and condemnation of certain property.—It shall be the duty of the State Health Officer, between the first of November and the first of May of each and every year, and oftener if deemed necessary by the board, to visit all the cities and towns, or other points where two or more railroads meet, in the State of Florida, which, in the judgment of the board it may be necessary for him to inspect, and to thoroughly investigate the sanitary conditions of said cities or towns; and he shall have the power, and it shall be his duty, to condemn in any of said cities or towns any sidewalks, pavements, buildings, wharves, or other things that in his judgment shall be likely to produce or cause the spread of epidemic diseases; and he shall give notice to the mayor and council of such city or town, or other authority, to repair, remove, cleanse, or remedy the same within thirty-six hours, and if the same shall not be done, as so required, it shall be his duty to have the same done himself, and the expense thereof shall be paid out of the health fund hereinafter provided, and be afterward assessed as a tax upon the assessable property of said city or town to be assessed by the county assessor upon the notification by the health officers of the amount, and collected by the county collector at the next annual assessment and collection thereafter, said amount so realized to be replaced in the health fund of the State by the proper authorities: Provided, A list and memorandum of property to be condemned shall be made and valuation placed upon the same by three disinterested freeholders, one to be selected by said health officer, one to be selected by the owner of the property or his agent, and the third to be selected by the two freeholders already selected, before being condemned or destroyed; and the value of any private property that may be condemned and ordered to be destroyed by the health officer, shall be paid to the owner thereof out of any funds provided and appropriated for the expenses of the State Board of Health, upon the certificate of said health officer that said property was destroyed, approved by the board of health and endorsed by the president of the board.

Ib., Sec. 13.

1122. (774.) Board to make and publish rules.—It shall be the duty of the State Board of Health to formulate such rules and regulations for the preservation of the public health as, in their judgment, they may deem necessary, and to meet upon the first Monday in May of each year to formu-

late such additional rules and regulations for the preservation of the public health, as their experience may suggest. and they shall have the same published in such place and in such manner as they may deem best to give greatest publicity to the same.

1123. (775.) Health officer to act as secretary.—It shall be the duty of the State Health Officer to attend all meetings of said board of health, and act as secretary of the same. Ibid.

1124. (776.) President may call meetings.—The president of said board of health shall have power to call meetings of said board at any time, and at such place as he may designate, to take measures for the public safety. Ibid.

1125. (777.) Board may abrogate quarantine.—The State Board of Health shall have the power, after close personal inspection, to modify or abrogate any and all quarantine regulations after they may be established by said State health officer. Ib., Sec. 14.

1126. (778.) With consent of Governor may call upon general government.—The State Board of Health shall have the power, by and with the consent of the Governor, when the occasion demands it to call upon the general government for such aid as the necessities arising out of any epidemic may require. Ibid.

1127. (780.) Compensation of members of board and health officer.—The State Health Officer shall receive a salary of three thousand dollars a year, to be paid quarterly, upon his requisition, approved by the president of the board of health, out of the fund hereinafter provided, together with his actual traveling expenses while engaged in the discharge of his duties as State Health Officer. The members of the State Board of Health shall receive a per diem of six dollars for each day of actual session, with mileage to and from their homes to the place of meeting, by the nearest and most practicable route, at the rate of ten cents per mile. Ib., Sec. 16.

1128. (781.) Assistant health officer.—There shall be designated and employed by the State Board of Health an assistant State Health Officer, who must also be a physician of experience and skilled in the diagnosis of infectious and contagious diseases, and who shall be subject to the orders and instructions of the State Health Officer, and in case of sickness or disability of the State Health Officer he shall succeed to the duties for the time being of the State Health Ib., Sec. 17.

Officer. The assistant health officer shall receive fifteen dollars per diem for each day that he is engaged in active service under the direction of the State Health Officer, and five cents per mile for every mile traveled in the performance of such service, and shall hold the appointment until removed for cause by the State Board of Health.

Ib., Sec. 18.

1129. (782.) Oath and bond of State Health Officer.—The State health officer before entering upon his duties, shall take before some person competent to administer oaths, an oath to faithfully perform the duties of his office, and enter into a bond, with good and sufficient sureties, in the sum of ten thousand dollars, payable to the president of the board of health, said bond to be approved by said president, conditioned for the faithful discharge of his duties. Said bond to be prosecuted by the Attorney-General for any neglect of duty or abuse of power herein conferred, and if said bond should be forfeited, all amounts collected from such prosecution shall be placed to the credit of the beforenamed health fund, by said president of the board.

Ib., Sec. 19.

1130. (783.) President to certify expenses and report to Governor.—All expenditures of the board of health shall be certified by the president of the board, and he shall make an annual report to the Governor of all such expenditures, in a clear and concise statement, together with any special observations, and recommendations of facts that he may present, that would be conducive to the health and sanitary condition of the State; and such annual statements shall finally be submitted by the Governor to the State Legislature, when in regular session convened, and shall be published like other reports of State officers, and the president of said board shall hold for inspection properly certified vouchers for such expenditures, a copy of which shall be furnished the Comptroller, who shall not draw his warrant on the Treasurer without the proper certificates and vouchers.

Ch. 4693, Acts 1899, Sec. 1.

1131. One-half mill tax for State Board of Health.—There shall be levied and collected annually upon the assessable property of the State a tax of one-half of one mill to create a special fund for the maintenance and support of the State Board of Health other than for maintenance, quarantine or maritime sanitation.

Ib., Sec. 2.

1132. Comptroller to audit account and draw warrant.—Upon the presentation to the Comptroller of any accounts duly approved by the State Board of Health, accompanied by such itemized vouchers as shall be required by him, the

Comptroller is hereby authorized to audit the same and draw a warrant on the State Treasurer for the amount for which the account is audited, payable out of the money received from the special tax, provided for in Section 1131.

1133. Monthly requisition on Comptroller.—The State Board of Health is hereby authorized to forward to the Comptroller of the State at the end of each month a requisition for a sum of not more than $2,500.00 for current and incidental expenses for the ensuing month. Upon the receipt of such requisition the Comptroller shall endorse on same the amount that may be so required and the Treasurer shall transmit the amount named in the requisition to the State Board of Health, which amount so advanced shall be covered and accounted for to the Comptroller by proper vouchers and payment of any unexpended balance during the current month and before a succeeding monthly advance is made, and the Comptroller shall audit the accounts and vouchers, and draw his warrants upon the treasury for the amount due, and shall pay over to the Treasurer such warrant and any amount returned by the State Board of Health as provided for in this section, taken up by the requisition of the State Board of Health given to the Treasurer. Ib., Sec. 8.

CHAPTER II.

COUNTY BUREAU OF IMMIGRATION.

1134. Bureau of immigration.—The county commissioners of the various counties of Florida, may, when requested in writing by the owners of a majority of the assessed lands of their county, establish a county bureau of immigration, which bureau shall consist of the chairman of the board of county commissioners and one member from each election district of the county. Ch. 4162, Acts 1893, Sec. 1.

1135. Selection of members.—The members from each election district shall be selected by the registered voters of the various election districts in such manner as they may prescribe. Ib., Sec. 2.

1136. Notice of appointment.—Upon the adoption of the resolution by the county commissioners establishing a county bureau of immigration, they shall give notice of Ib., Sec. 3.

same by publication in some newspaper of the county for four consecutive weeks; in which notice the registered voters of the various election districts shall be requested to elect their members to the bureau and to certify the names of the persons so selected to the chairman of the board of county commissioners within sixty days of the day of publication. In the event any district or districts shall fail to make a selection, the selection shall be made by the board of county commissioners at their regular meeting.

Ib., Sec. 4.

1137. Term of office.—The members of the county bureau of immigration shall hold their offices for the term of two years. They shall also elect their own chairman, secretary and treasurer, and shall be authorized to employ a county agent of immigration whose salary shall be fixed by them; which salary shall be paid out of the fund hereinafter to be specified.

Ib., Sec. 5.

1138. Salary of treasurer.—No members of the county bureau of immigration shall receive any salary, except the treasurer, whose salary shall not exceed fifty dollars.

Ib., Sec. 6.

1139. Tax, manner of collecting.—Whenever a county bureau of immigration is established in any county, the county commissioners of said county shall levy an annual tax not exceeding two cents per acre upon all of the assessed lands of the county, providing that lands covered by water shall not be subject to this assessment, and providing that fractional parts of an acre shall be subject to the levy of two cents per fraction. Said tax shall be collected in the same manner as other taxes and shall be turned over by the county treasurer to the treasurer of the bureau of immigration as soon as collected, taking therefor the receipts of said treasurer of the county bureau of immigration.

Ib., Sec. 7.

1140. Bond of treasurer.—The treasurer of the county bureau of immigration shall enter into a bond with two or more sureties for the faithful performance of his duties, in such amount as may be fixed by the county bureau of immigration.

Ib., Sec. 8.

1141. Report.—The treasurer of the county bureau of immigration shall make a semi-annual report to the board of county commissioners of the amount received by him and for what purpose expended.

Ib., Sec. 9.

1142. Expending funds.—The county bureau of immigration shall have authority to expend the funds entrusted

to their care only for the purposes of inducing bona fide settlers to their county, and shall cause their chairman on the first day of January of each and every year to publish in some newspaper in the county for four consecutive weeks the amount of money received by the bureau and for what purpose expended.

1143. Duty of county commissioners.—The county commissioners shall, when requested in writing by the owners of the majority of the assessed lands of the county, abolish such county bureau of immigration: Provided, That the county bureau shall not be abolished within two years of its establishment. Ib., Sec. 10.

CHAPTER III.

BUREAU OF VITAL STATISTICS, AND A REGISTRATION THEREOF.

1144. Vital statistics.—The State Board of Health of Florida shall compile accurate vital statistics of marriages, births and deaths occurring in the State, arranged by counties and incorporated cities, with statements of the prevailing diseases and all information of a medical or sanitary nature that may be of value in the preservation of the public health, and for this purpose a State bureau of vital statistics is created, to be under the supervision of the State health officer, as register of said bureau, with office at the office of the State Board of Health. The said register of vital statistics shall formulate, print and furnish suitable blanks for collecting and compiling such statistics, and he shall, as often as once a month, tabulate and publish such statistics, and furnish copies of the same to the incorporated cities within the State, and gratuitously distribute copies to persons and to health boards of other States of the Union, as may be deemed advisable by the State Board of Health. Ch. 4694, Acts 1899, Sec. 1.

1145. Physicians to report births and deaths.—Every birth and death occurring in this State shall be reported by the attending physician, midwife, nurse, or head of the family, to the State Board of Health or their agent as soon thereafter as possible, on blanks furnished free and in accordance with the forms prescribed by the State Board of Health. Where cities or towns have a health department Ib., Sec. 2.

as a part of the municipal government, the report provided for may be rendered through the city or town health officer.

(Penalty for failure to report: See Sec. 3624.)

CHAPTER IV.

CASES OF CONTAGIOUS OR INFECTIOUS DISEASES.

Ch. 4695, Acts 1899, Sec. 1.

1146. Physicians to report suspicious cases of diseases. Whenever a physician or other person shall report a suspicious case of disease to the State Board of Health as required by the provisions of Section 3619 of the General Statutes of Florida, he shall also immediately give notice thereof to the city health officer, if there be any health officer, and if not to the mayor of the incorporated city or town in which the sick person may be, or if the sick person resides or be found outside the limits of a city or town, to the county health physician or his representative if there be any, and if not to the chairman of the county commissioners of the county within which the sick person may be.

Ib., Sec. 2.

1147. Duty of health officer.—It shall be the duty of the city or county health officer, or the mayor, or the chairman of the board of county commissioners, to whom a suspicious case of disease is reported in accordance with the provisions of the preceding section, to take immediate measures to examine the case reported, to furnish medical attention, food, clothing, and whatever may be necessary to care for, segregate and guard such suspicious reported case, in accordance with the rules and regulations of the State Board of Health for the protection of the public health, now in force, or hereafter adopted, and shall manage and control such case or cases until the arrival of the State health officer or his agent.

Ib., Sec. 3.

1148. Physician to assume control in certain cases.—Whenever the State health officer shall investigate any suspicious case or cases of diseases, in accordance with the provisions of Section 1147 of these General Statutes, and shall determine that such disease is contagious or infectious and a menace to the public health of the citizens of the State, then he or his agent shall assume charge and management of all and every such case of contagious and infectious disease. All necessary and legitimate expenses attendant

upon such case or cases of diseases, after the State health officer or his agent shall have investigated and determined the same and assumed management and control, shall be paid out of the public health fund of the State on vouchers approved by the president of the State Board of Health as now provided by law.

(For penalties, see Sections 3619-3623.)

CHAPTER V.

SANITARY INSPECTION OF HOTELS AND BOARDING HOUSES.

1149. Examination of buildings, etc.—The State Board of Health shall cause, as often as may be necessary, upon information or complaint of any person, or at the request of any town or city council, or health officer, an examination to be made of any building or buildings, and the premises connected therewith, used for board and lodging of visitors or other persons, containing ten or more rooms, such examination to be made by or under the supervision of the State Board of Health, or by persons under its appointment, as soon as possible after such application or complaint shall have been made. Ch. 4696, Acts 1899, Sec. 1.

1150. Purpose of examination.—It shall be the purpose in making such examination, to ascertain the source and sufficiency of the water supply, the quality of the water, the methods of removal of waste water, slops, excreta, house refuse, garbage, and all other putrescible matter of any kind, the ventilation available, and all other conditions relating to the health, sanitary conditions and safety of said buildings and premises. That for each inspection so made the owner, or managing occupant of the premises so inspected shall pay to the State Board of Health the sum of two dollars, if premises are found to be in unsanitary condition, which amount shall be used by said board in defraying the expense of such inspection, and issuing the certificates hereinafter provided for. Ib., Sec. 2.

1151. State health officer to issue certificate.—Upon the completion of such inspection, the said State Board of Health shall authorize the State health officer to issue a certificate, reciting the details of the sanitary and other conditions of the examined premises, in accordance with the facts ascer- Ib., Sec. 3.

tained by such examination, and said certificate shall forthwith be posted by the owner or managing occupant of such premises in a safe and conspicuous place, where it may be easily seen and read by all persons, guests or other occupants of said premises; and if the said certificate shall become defaced or destroyed, said managing occupant shall immediately procure a copy of the same, which shall be placed in a like conspicuous position, for which copy the State Board of Health shall not be entitled to receive any fee.

Ib., Sec. 5.

1152. Duty of State Board of Health as to certain buildings.—Whenever, upon an examination of any premises, the inspection of which is required by this chapter, it shall be found by said State Board of Health that the premises and building so inspected are in an unsanitary condition, such as to constitute a menace to the health and safety of the occupants thereof, it shall then be the duty of the said State Board of Health to cause to be posted upon some conspicuous place on said premises, a written or printed notice, requiring the owner or managing occupant of said premises, or both, to make such changes or to perform or refrain from the performance of such acts as may be necessary to place said premises in a sanitary and safe condition for the occupants thereof, within a reasonable time to be fixed by said notice.

(For punishment for violation of this section, see post, Section 3693).

CHAPTER VI.

NUISANCES INJURIOUS TO HEALTH.

Ch. 4346, Acts 1895, Sec. 1.

1153. What constitutes a sanitary nuisance.—A sanitary nuisance is hereby declared to be the commission of any act, by an individual, municipality, organization or corporation, or the keeping, maintaining, propagation, existence or permission of anything, by an individual, municipality, organization or corporation, by which the health or life of an individual, or the health or lives of individuals, may be threatened or impaired, or by which or through which, directly or indirectly, disease may be caused.

Ib., Sec. 11.

1154. Duty of State health officer.—It shall be the duty of the State health officer, upon request of the proper authorities, or of any three responsible resident citizens, or

whenever it may seem necessary to the president of the State Board of Health, or to the State health officer himself, to investigate the sanitary condition of any city, town or place in the State of Florida; and if upon examination the State health officer shall ascertain the existence of any sanitary nuisance as herein defined, it shall be his duty to serve notice upon the proper party or parties to remove or abate the said nuisance, or if necessary, to proceed to remove or abate the said nuisance, in the manner provided in Section 3680.

1155. Ibid.—It shall be the duty of the State health officer, upon receiving information or obtaining knowledge of the existence of anything or things herein declared to be nuisances by law, to notify the person or persons committing, creating, keeping or maintaining the same, to remove or cause to be removed, the same, within twenty-four hours or such other reasonable time as may be determined by the State Board of Health, after such notice be duly given; and if the same is not removed by such person or persons within the time prescribed in said notice, it shall be the duty of the State health officer to remove or cause to be removed, such nuisance or nuisances, and the cost or expenses of such removal shall be paid by the person or persons committing, creating, keeping or maintaining such nuisances; and if the said costs and expenses thus accruing shall not be paid within ten days after such removal, the same shall be collected from the person or persons committing, creating, keeping or maintaining such nuisances, by suit at law. Ib., Sec. 12.

(For penalties concerning nuisances, see Sections 3683–3693.)

CHAPTER VII.

MEDICAL EXAMINATIONS AND PHYSICIANS.

1156. Requirements to obtain certificates. — When any person has practiced medicine successfully and continuously for a period of fifteen years in the State of Florida, and is of good moral character, upon proof of these facts being made to the board of medical examiners of the judicial circuit of the State where applicant resides, the said board of medical examiners, upon the application of such physician, shall examine said applicant in any recognized school of Ch. 4697, Acts 1899, Sec. 1.

practice that said applicant may elect to be examined in, and if such physician is found to be competent, the said board of medical examiners shall issue to such applicant a certificate as is now provided by law.

CHAPTER VIII.

BOARD OF ECLECTIC EXAMINERS.

Ch. 4698, Acts 1899, Sec. 1.

1157. Governor to appoint.—The Governor shall appoint a board of eclectic medical examiners for the State at large; said board shall be composed of three practicing eclectic physicians of known ability, who shall be graduates of a college of the eclectic school of medicine.

Ib., Sec. 2.

1158. Examination of applicants. — The said board of eclectic medical examiners shall be authorized to examine all applicants, who shall present a certificate of graduation (showing that such applicant has taken not less than a two years' course), from some college of the eclectic school of medicine, and shall not have authority to examine any applicant from any other school of medicine.

Ib., Sec. 3. as amended by Ch. 5008, Acts 1901, Sec. 1.

1159. Duty of board.—The duties of the board of eclectic medical examiners as to organization, time and place of meeting, and in all other respects, except as stated in this chapter, shall be the same as the powers conferred by law on the board of homeopathic medical examiners: Provided, That said board may meet in any city in this State.

CHAPTER IX.

OF PHYSICIANS.

Ch. 3881, Acts 1889, Sec. 1, as amended by Ch. 5426, Acts 1905, Sec. 1.

1160. (801.) Appointment of medical examiners. — The Governor shall appoint a State board of medical examiners, and also a State board of homeopathic medical examiners.

Ch. 3881, Acts 1889, Sec. 2, as amended by Ch. 5426, Acts 1905, Sec. 2.

1161. (802.) Qualifications of examiners.—The State board of medical examiners shall be composed of seven regular practicing physicians who have been duly licensed to practice in this State; no two members shall be residents of

the same judicial circuit. The board of homeopathic examiners shall be composed of three practicing homeopathic physicians who are graduates in good standing of some medical college recognized by the American Institute of Homeopathy.

1162. (803.) Terms of office.—The appointment of each member of each of said boards shall continue for four years from the date of such appointment. Whenever a vacancy shall occur in any of said boards the same shall be filled by appointment by the Governor for the unexpired term. Ch. 3881, Acts 1889, Secs. 3 and 6.

1163. (804.) To elect president and secretary and make rules.—Every board shall elect one of their number president and one secretary, and shall adopt all necessary rules for the guidance and control of their meetings. Ib., Sec. 4.

1164. (805.) Regular meetings.—Each board shall meet regularly semi-annually at some central and convenient point in the State to conduct examinations, and grant licenses as herein provided, and they shall give at least one month's public notice of their meeting by publication once a week in a newspaper of general circulation throughout the State. Ib., Sec. 5. as amended by Ch. 5426, Acts 1905, Sec. 3.

1165. Examinations.—It shall be the duty of said board of examiners to examine thoroughly every applicant for certificate of qualification to practice medicine in any of its branches or departments, upon the production of his medical diploma from a recognized college, or in the event said applicant shall have lost his diploma, or the same shall have been destroyed prior to the year 1870, then upon satisfactory evidence to such boards of such loss or destruction, upon the following subjects: Anatomy, physiology, gynecology, surgery, therapeutics, obstetrics and chemistry, but no preference shall be given to any school of medicine: Provided, That it shall be the duty of the board of homeopathic medical examiners to examine thoroughly every applicant for certificate of qualification to practive medicine in any of its branches or departments, upon the production of his diploma from a college recognized by the American Institute of Homeopathy, upon the following subjects: Anatomy, physiology, surgery, gynecology, materia medica, therapeutics, obstetrics and chemistry, and no preference shall be given to any school of medicine. Ch. 4419, Acts 1895, Sec. 1.

1166. (807.) Certificates.—When the board shall be satisfied as to the qualifications of an applicant they shall grant to him a certificate to that effect, which certificate shall en- Ch. 3881, Acts 1889, Sec. 8.

title the person to whom granted to practice medicine in any county when the same shall have been recorded as required by Section 1169.

Ch. 4540, Acts 1897, Sec. 1, amending Rev. Stats. 1892, Sec. 808.

1167. Temporary certificate to practice medicine.—Any member of the several boards of medical examiners in this State shall be authorized to grant a temporary certificate of qualifications to any applicant desiring to practice medicine in this State, upon examination, until the next regular meeting of the board: Provided, however, That the applicant has never before received a similar certificate from any member of the several boards. All temporary certificates shall cease to be of force at the regular meeting next after the granting of the same.

Ib., Sec. 2.

1168. Duty of member granting temporary certificate. It shall be the duty of the member granting a temporary cetificate to notify the secretary of the board of which he is a member of his action, and it shall be the duty of the said secretary to notify the secretaries of the several other boards in the State, whose duty it shall be to notify the members of the several boards of the granting of said certificate.

Ch. 3881, Acts 1889, Ib., Sec. 10.

1169. (809.) Record of certificate.—The certificate provided for in the two preceding sections shall, before the person to whom it is granted shall be entitled to practice by virtue thereof, be recorded in the office of the clerk of the circuit court of the county in which such practitioner may reside or sojourn, in a well bound book to be kept by the clerk for that purpose, and when so recorded the clerk shall certify thereon under his official seal the fact and date of such record, and shall return such certificate to the person to whom the same was granted, and shall be entitled for such service to collect from the holder of such certificate the legal fee for recording.

Ch. 3881, Acts 1889, Sec. 11, as amended by Ch. 5426, Acts 1905, Sec. 4.

1170. (810.) Examination fee.—The board shall be entitled to demand and receive from each applicant examined the sum of fifteen dollars, whether a certificate be granted to such applicant or not.

Ch. 3881, Acts 1889, Secs. 13 and 14.

1171. (812.) Provisions not to apply to certain persons. The provisions of this chapter shall not apply to persons who have heretofore received certificates of qualification and have recorded the same as provided by the laws of this State heretofore existing, nor to females, who follow the practice of midwifery strictly as such. No persons, except those described in this section, shall be permitted to practice medi-

cine in any of its branches or departments, without first having obtained and recorded a certificate of qualification from some authorized board of medical examiners as hereinbefore provided.

(For penalties for violations of provisions of this chapter, see Sections 3610-3611.)

CHAPTER X.

OF PHARMICISTS.

1172. (813.) Board of pharmacy. — The Governor shall appoint five persons from among the most prominent pharmacists of the State, all of whom shall have been residents of the State for two years and of at least four years' practical experience in their profession, who shall be known and styled the board of pharmacy for the State of Florida, one of whom shall hold his office for one year, one for two years, one for three years, two for four years, and each until his successor shall be appointed and qualified; and each year thereafter another commissioner shall be appointed for four years until a successor is appointed and qualified. If a vacancy occurs in said board another commissioner shall be appointed as aforesaid to fill the unexpired term thereof. Said board shall have power to make by-laws and all necessary regulations, and to create auxiliary boards if necessary, for the proper fulfillment of their duties under this chapter without expense to the State. Ch. 3880, Acts 1889, Sec. 3.

1173. (814.) Examination, registration, etc. — The said board of pharmacy shall, at stated times, to be fixed by them, being at least once in each year, and at any time upon application of ten applicants for examination, and at such time and place and in such manner as they may determine, either by a schedule of questions to be answered and subscribed to under oath, or orally, examine every person who shall desire to conduct the business of selling at retail, compounding or dispensing drugs, medicines or chemicals for medical use, or compounding or dispensing physicians' prescriptions as a pharmacist; and if a majority of said board shall be satisfied that said person is competent and fully qualified to conduct said business of compounding or dispensing drugs, medicines or chemicals for medicinal use, or to compound or dispense physicians' prescriptions, they shall enter the name of such person as a registered pharmacist in a book provided for that purpose, and all graduates of colleges of pharmacy that require a practical experience in Ib., Sec. 5.

pharmacy of not less than four years before granting a diploma, shall be entitled to have their names registered by said board without examination: Provided, however, That this chapter shall not be so construed as to prevent any physician who is authorized to practice medicine or surgery under the laws of this State, from registering as a pharmacist or druggist without examination: Provided, also, That any person not a pharmacist or druggist may open and conduct such store, if he shall keep constantly in his employ a registered pharmacist or druggist, but shall not himself sell or dispense drugs or medicines except proprietary and patent medicines in original packages.

Ib., Sec. 4.

1174. (816.) Fees.—The board of pharmacy shall be entitled to collect of each person whom they register and furnish a certificate as a registered pharmacist without examination the sum of two dollars, and of each person that they examine orally, or whose answers to a schedule of questions are returned subscribed to under oath, the sum of three dollars, which shall be in full for all services; and in case the examination of such person shall prove defective and unsatisfactory, and his name not to be registered, he shall be permitted to present himself for examination within any period not exceeding twelve months thereafter and no charge shall be made for such re-examination.

Ib., Sec. 7.

1175. (821.) Pharmacist and owner responsible for quality of drugs.—Every registered pharmacist, apothecary and owner of any store shall be held responsible for the quality of all drugs, chemicals or medicines he may sell or dispense, with the exception of those sold in original packages of the manufacturer and also those known as proprietary; and should he knowingly intermingle and fraudulently adulterate or cause to be adulterated such drugs, chemicals or medical preparations, his name shall be striken from the register.

Ib., Sec. 13.

1176. (823.) Disposition of fees.—The sum of five hundred dollars per year, or as much thereof as may be found necessary, is hereby appropriated, out of the money so received for examinations or licenses, for the expenses of said board of pharmacy. All surplus over and above the said amount to be divided as follows: One-half to the Florida State Pharmaceutical Association, and the remainder to be paid into the State treasury.

Ch. 1736, Acts 1870; Ch. 1891, Acts 1872.

1177. (824.) When certificates of physicians required. It shall be a misdemeanor for any person to compound or mix for sale any drugs or medicines of any kind, or to carry

on or engage in the business or avocation of a druggist or apothecary in this State, in any place other than such places as are included in Section 3612, unless such person shall be a registered pharmacist, or unless such person shall have first obtained a certificate from at least three regular practicing physicians, graduates from some regular medical college, said physicians being residents and practitioners of the county with the applicant; and said physicians shall, in said certificate, set forth under oath, made before some judicial officer, that they have carefully, diligently and thoroughly examined the applicant, under this chapter, and find that he is of good moral character, of sober and steady habits, and possessed of medical and chemical knowledge to thoroughly qualify him for the business of a druggist or apothecary, in the particular county in this State for which the application is made under this chapter, and that the citizens of this State may have full faith and confidence in his knowledge, skill, carefulness and ability as a druggist or apothecary; which said certificate shall be acknowledged by the said physicians before the clerk of the circuit court of the county wherein it was made, and filed in his office, and a copy thereof, under the seal of the county, shall be given to the applicant: Provided, however, That if there be not a sufficient number of qualified physicians, under this chapter, residing and practicing in the county in which the application is made, any other physician, of like qualifications, residing adjacent to the applicant may act and grant the certificate under this section.

1178. (825.) Morphine to be wrapped in scarlet paper. It shall not be lawful for any druggist or other dealer in drugs and medicines to sell or offer for sale, sulphate, or other preparation of morphine, unless the same is wrapped in scarlet paper and plainly labeled. Ch. 3286, Acts 1881, Sec. 1.

1179. (826.) Not to apply to physicians prescribing. Nothing in this chapter is intended to apply to regular practicing physicians, putting up their own prescriptions in their ordinary practice of dispensing medicines. Ch. 1891, Acts 1872.

(For penalties for violation of this chapter, see Sections 3612-3617.)

CHAPTER XI.

OF DENTISTS.

1180. (827.) License required to practice.—It shall be unlawful for any person to engage in the practice of dentistry in the State of Florida unless such person shall have Ch. 3711, Acts 1887, Sec. 1.

obtained a certificate from a board of dentists, duly authorized and appointed under the provisions of this chapter to issue certificates.

Ib., Sec. 2.

1181. (828.) The board of examiners.—The board of examiners shall consist of five dental graduates or practitioners of dentistry appointed by the Governor: Provided, That said graduates or practitioners have been practicing in the State of Florida for a term not less than three years. Said board shall be appointed to serve two years. The Governor shall have power to fill all vacancies in said board for unexpired terms.

Ch. 4047, Acts 1891, Sec. 1, amending Sec. 829, Rev. Stats. 1892.

1182. Duties of board.—It shall be the duty of this board:

First—To meet annually at the call of three (3) members of said board; thirty (30) days' notice shall be given of the annual meeting.

Second—To grant certificates to all applicants who have obtained a diploma from a reputable dental college and who pass a satisfactory examination.

Third—To keep a book in which shall be registered the names of all persons licensed to practice dentistry in the State of Florida.

Fourth—For which examination and certificate the board shall be entitled to receive a fee of ten dollars ($10.00) to defray the expenses of holding the meetings.

Ch. 3711, Acts 1887, Sec. 5.

1183. (830.) Quorum of said board.—Three members of said board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for their meeting, those present may adjourn from day to day until a quorum is present.

Ch. 4740, Acts 1899, Sec. 1, amending Sec. 831, Rev. Stats. 1892.

1184. Temporary certificate.—One member of said board may grant certificate to an applicant to practice until the next regular meeting of said board, when he shall report the fact, at which time the temporary certificate shall expire; and in no case shall such temporary certificate be renewed or extended, nor shall such temporary certificate be again granted to the same applicant on a second application therefor, nor after such applicant has been rejected by the board.

Ib., Sec. 2, amending Sec. 832, Rev. Stats. 1892.

1185. Law does not apply to certain persons.—Nothing in this chapter shall be construed as to prevent any person form extracting teeth where there is no resident licensed dentist in the community and without the use of local or general anaesthetics: And Provided, further, That none of the provisions of this chapter shall apply to regularly licensed physicians and surgeons.

1186. To register with clerk of court.—Every person practicing dentistry in the State of Florida shall register his name, together with his postoffice and the date of his certificate, in the office of the clerk of the circuit court of the county in which he practices, and shall, upon payment to such clerk of a fee of fifty cents, be entitled to receive from him a certificate of such registration. Ch. 4740, Acts 1899, Rev. Stats. 1892, Sec. 833.

(Penalty for practicing dentistry without license, see Section 3618.)

CHAPTER XII.

HOSPITAL FOR THE INSANE.

1187. Name and location of hospital.—The institution formerly known as The Florida Asylum for Indigent Lunatics shall be known and hereafter called The Florida Hospital for the Insane, and shall be located at Chattahoochee, in Gadsden county, and the public buildings of the State at that place are devoted to that purpose. Rev. Stats. 1892, Sec. 835, amended by and consolidated with Ch. 4801, Acts 1899, Sec. 1.

1188. (836.) Control of asylum.—The Board of Commissioners of State Institutions shall have the management and control of the asylum for indigent lunatics of the State. Ch. 3578, Acts 1885, Sec. 1.

1189. (837.) Employment of superintendent, etc.—They shall employ a superintendent and such physicians and other medical attendance and such other persons as may be necessary for the proper management and care for the lunatics, and of such asylum, and of the properties therein or thereto belonging or appertaining. Ibid.

1190. (838.) Board to prescribe duties of employees, and bond of superintendent.—Said board of commissioners shall prescribe the powers and duties of the superintendent and of all the other employees, and shall require of the superintendent bond with sureties, conditioned to properly apply and fully account for all supplies, property and moneys which may be intrusted to or received by him, and for the faithful performance of his duties, as they may from time to time be prescribed by such board. Ib., Sec. 2.

1191. (839.) Compensation of superintendent and employees.—The compensation of such superintendent and all other employees shall be prescribed by the board. The compensation of the superintendent shall not exceed two thousand dollars per annum. Ib., Sec. 3.

Ib., Sec. 4.

1192. (840.) Bond may be required of any employee. The board may require bond and sureties of any employee other than the superintendent, conditioned as they may prescribe.

Ib., Sec. 5.

1193. (841.) Removal of employees.—The superintendent and other employees shall be removable at the pleasure of the board.

Ch. 3706, Acts 1887.

1194. (842.) Physicians to keep record of patients, etc. The physician of the insane asylum shall thoroughly investigate the history of each patient, and upon a careful diagnosis of the same, make a record thereof in a book of sufficient magnitude, which book shall be termed the physician's book of record, and such record shall contain the name of each person who may thus come under his treatment, the name of the disease to be treated, and the date of beginning treatment, and each day's prescription while under treatment, which record shall be open for future references by his successor, the superintendent, the cabinet authorities, legislative committees and all others interested.

Ch. 3036, Acts 1877, Sec. 1.

1195. (846.) Orders as to destitute lunatics.—If it shall appear that said lunatic or insane person is destitute, then the judge shall direct and order that the sheriff shall transport such lunatic or insane person to the Hospital for the Insane of the State of Florida and there deliver such lunatic or insane person to the officer having charge of the same, for the purpose of his care, custody and treatment: Provided, however, That the judge may in his discretion direct the said lunatic or insane person to be delivered to any other person for his care, custody and maintenance, in which event the said insane person shall be so delivered and it shall be the duty of the person to whom such delivery is made to provide for his care, custody and maintenance.

Ch. 3115, Acts 1879, Sec. 1.

1196. (853.) Pay patients admitted to the hospital.—It shall be lawful for the superintendent of the Hospital for the Insane of the State of Florida, when directed by the Board of Commissioners of State Institutions, to receive into said asylum any lunatic, idiot or insane person whose friends, parents or guardians are able and willing to pay for the care and custody and maintenance of said lunatic, idiot or insane person.

Ib., Sec. 2.

1197. (854.) Care of such person.—Such lunatic, idiot or insane person shall receive all proper care, food, clothing and medical attention from the superintendent, physician and other employees of the hospital.

1198. (855.) Payments for such patients.—The Board of Commissioners of State Institutions shall, in all such cases, prescribe what amount shall be paid by the friends, parents or guardians of such lunatic, idiot or insane person as may be received in said hospital for the support, care and custody of such lunatic, idiot or insane person, and such money shall be paid by the friends, guardians or parents of such lunatic, idiot or insane person, quarterly to the Treasurer of the State of Florida, who shall receipt for the same; and such moneys so received shall always be taken and considered as a part of the sum appropriated for the maintenance of indigent lunatics, and shall be used as such. Ib., Sec. 3.

1199. (856.) Bond.—When the Board of Commissioners of State Institutions shall deem it necessary or expedient they may require a good and sufficient bond, from the friends, parents or guardians of any lunatic, idiot or insane person whom it may be desired to have placed in the said hospital, for the prompt and faithful payment of what may be charged for the support, care and custody of such lunatic, idiot or insane person; and if such friends, guardians or parents do not pay the amounts required by the board of commissioners for the support, care and custody of such lunatic, idiot or insane person within six months after the same is due, it shall be the duty of said board of commissioners to commence suit upon said bond; and any moneys recovered in any such action shall be always applied to the maintenance of indigent lunatics. Ib., Sec. 4.

(Penalty for violating provisions of this chapter, see Section 3489.)

CHAPTER XIII.

MODE OF PROCEDURE IN CASE OF SUPPOSED INSANITY.

1200. Petition.—When it is supposed that a person, resident of this State, is insane, either non compos mentis or sufficiently devoid of reason to be incapable of self control, a petition signed by five reputable citizens, not more than one of whom shall be a relative of the person, setting forth that he or she is to each of the petitioners personally known and that their knowledge of the mental condition of the subject is sufficient to justify the belief that he or she is insane, and asking that examination be instituted and made as provided by law, may be presented to the county judge or judge of the circuit court having jurisdiction. Ch. 4357, Acts 1895, Sec. 1.

Sec. 2, Ib., as amended by Ch. 5264, Acts 1903, Sec. 1.

1201. Duty of judge. Examining committee.—Any county judge or judge of the circuit court to whom, as provided in the preceding section, a petition is submitted, shall without unnecessary delay, appoint one intelligent citizen, who shall not have been a petitoner in the case, and two practicing physicians of good professional standing who shall be graduates of a school of medicine recognized by the American Medical Association, when such physicians reside in the county, who shall constitute an examining committee, and within a reasonable time after notice of their appointment shall secure the presence of the supposed insane person, and shall make such thorough examination as will enable them to ascertain his or her mental and physical condition at the date of the examination, and if considered insane, whether the insanity is acute or chronic, its apparent cause, the hallucination, if any, and the age and propensities of the subject; also whether indigent or possessing sufficient available means for his or her support: Provided, further, That if the person alleged to be insane shall at any time prior to the rendering of the decree in the case, apply to the court before which proceedings are had, by a petition for permission to contest the charge of insanity, the court on the presentation of the petition shall set the case on a day certain for hearing, and if the accused is indigent and unable to procure the attendance of witnesses in his or her behalf, the court shall have summoned a reasonable number of witnesses for such person, to be paid by the county.

Ch. 4557, Acts 1895, Sec. 3.

1202. Report.—When examination of an alleged insane person has been made as provided in the preceding section, the examining committee shall report to the county judge or judge of the circuit court as the case may be, that fact, and shall communicate in their report the information contemplated in said section, each of the three committeemen signing the report.

Ib., Sec. 4, as amended by Ch. 5456, Acts 1905.

1203. Sheriff to deliver custody.—On receiving the report of the examining committee, the county judge or judge of the circuit court, (as the case may be) shall examine the same; and if satisfied therefrom that the person examined and reported is insane within the meaning of this act, he the said judge shall so adjudge and decree, and shall make his order that the sheriff of the county from which the report is submitted shall at once deliver the person so adjudged to the superintendent of the Florida Hospital for Indigent Insane, there to be received for care, maintenance and treatment; such order of commitment shall include copy of the information and report provided for in section one of this

act, and same shall be transmitted by the sheriff to the superintendent of said hospital to be filed and held as his authority for detention of said insane person: Provided, When the proceedings reported by the said committee show the alleged insanity is chronic, or produced by epilepsy or senility and that the person does not require confinement or mechanical restraint to prevent self injury or violence to others, but that he or she is indigent, the county judge or judge of the circuit court (as the case may be in such event) shall adjudge and decree that the person is incurably insane, harmless and indigent, and shall make and issue his order that the sheriff shall deliver the person so adjudged to the county commissioners of the county where he or she resides for care and maintenance as by law made and provided for paupers: Provided, That if any responsible person will offer to assume the care and custody of any such harmless person without cost to the State or county the judge or court may in his or its discretion so order.

1204. Compensation, etc.—For the services herein required, compensation shall be allowed as follows: For each examination the physician, two dollars, and each of the other committeemen, one dollar, and when the proceedings are had before the county judge he shall receive two dollars for appointing examining committee, examining their report, making order, and for such other services as may be required, and the sheriff shall receive such compensation as deemed reasonable by the county commissioners, but not to exceed that allowed for service of summons ad res: Provided, All accounts accruing in pursuance of this chapter shall be approved and paid by order of the county where such insane person resides: Provided, however, That no expense, cost or charge provided for in this chapter shall be or become a charge upon the county, or authorized to be paid by the county commissioners except in cases where the person declared a lunatic, insane, non compos mentis or devoid of reason is insolvent and unable to pay same; and that such expenses, charges and costs in cases where the person declared lunatic, insane, non compos mentis or devoid of reason is able to pay, or has an estate of property out of which same may be realized, then such costs, charges and expenses shall be paid out of such estate and the guardian or trustee of such lunatic, insane, non compos mentis or person devoid of reason is authorized to apply by petition to the county judge or the judge of the circuit court in which the proceedings under this chapter were instituted, for permission to sell so much of the property, real or personal, of the estate of said person so declared lunatic, insane, non compos

Ib., Sec. 5.

mentis or person devoid of reason as may be necessary for the payment of costs, charges and expenses, and for the maintenance of said lunatic, insane, non compos mentis or person devoid of reason, and shall sell such property in the way and manner and upon the terms and conditions which shall be prescribed in the order of the judge directing the sale. And said guardian or trustee shall be entitled to a credit in his accounts for such expenditures and for such necessary legal assistance as he may require, in conducting such proceedings.

CHAPTER XIV.

POSTAL REGULATIONS FOR INSANE ASYLUMS.

Ch. 4035, Acts 1891, Sec. 1.

1205. Inmates to choose persons.—Each and every inmate of each and every insane asylum, both public and private, in the State of Florida, shall be allowed to choose one individual from the outside world, to whom she or he may write, when and whatever he or she desires, and over these letters to this individual there shall be no censorship exercised or allowed by any of the asylum officials or employees; but their postal rights, so far as this one individual is concerned, shall be as free and unrestricted as are those of any other resident or citizen of the State of Florida, and shall be under the protection of the same postal laws; and each and every inmate shall have the right to make a new choice of this individual party every three months, if he or she so desires to do.

Ib., Sec. 1.

1206. Duty of superintendent. — It is hereby made the duty of the superintendent to furnish each and every inmate of every insane asylum in this State, either public or private, with suitable material for writing, inclosing, sealing, stamping and mailing letters, sufficient at least for the writing of one letter a week, provided they request the same, unless they are otherwise furnished with such materials; and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a post office box provided by the State at the insane asylum, and kept in some place easy of access to all the patients; the attendance is required in all cases, to see that this letter is directed to the patient's correspondent, and if it is not so

directed it shall be held subject to the superintendent's disposal, and the contents of these boxes shall be collected once every week by an authorized person from the postoffice department, and by him placed in the hands of the United States mail for delivery.

1207. Names chosen to be posted.—It is hereby made the duty of the superintendent to keep registered and posted, in some public place at the insane asylum, a true copy of the names of every individual chosen as the inmate's correspondent and by whom chosen; and it is hereby made the duty of the superintendent to inform each of the individuals of the name of the party choosing him or her, and he is to request him or her to write his or her own name on the outside of the envelope of every letter he or she writes to this individual inmate; and all these letters bearing the individual writer's name on the outside, he is required to deliver or cause to be delivered, any letter or writing to him or her directed, without opening or reading the same, or allowing it to be opened or read, unless there is reason for believing the letter contains some foreign substance which might be used for medication, in which case the letter shall be required to be opened in the presence of a competent witness, and this substance shall be delivered to the superintendent to be used at his discretion, but the letter must be delivered as directed. Ib., Sec. 2. Ib., Sec. 2.

1208. Posting in asylum.—A printed copy of this law shall be framed and kept posted in every ward of every insane asylum, both public and private, in the State of Florida. Ib., Sec. 4.

(For penalty for violation of this chapter, see Section 3489.)

CHAPTER XV.

LOCAL ELECTION CONCERNING SALE OF LIQUOR.

1209. (857.) Petition, order and notice of election.—The board of county commissioners of each county shall, upon the presentation to said board, at a regular or special meeting thereof, a written application asking for an election in the county in which said application is made, to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein, and signed by one-fourth of the registered voters of said county, order an election in said county, Ch. 3700, Acts 1887, Sec. 1.

not oftener than once every two years, to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited in said county; and shall cause the clerk of said board to give at least thirty days' notice of said election by publishing the same in one newspaper in each and every town in said county, if a newspaper or newspapers be published in said county, and if none, then by posting at least ten written notices of said election in the most public places in said county, one of which shall be at the court house.

Ibid.

1210. (858.) Registration and qualifications of electors. For such election, electors may be registered as provided in the general law for registration for special elections, and they shall have the same qualifications for and prerequisites to voting as in elections under the general election laws.

1211. (859.) Mode of holding election.—The said election shall be held and conducted in the manner prescribed by law for holding general elections, except as herein provided.

Ibid.

1212. (860.) Time of holding elections.—All elections ordered under this chapter shall be held within sixty days from the time of presenting such application, but if any such election should thereby take place within sixty days of any State or national election, it shall be held within sixty days after any such State or national election.

Ibid.

1213. (861.) Inspectors, returns and canvass.—Inspectors of election shall be appointed and qualified as in cases of general elections, and they shall canvass the vote cast and make due returns of the same to the county commissioners without delay. The county commissioners shall canvass the returns and declare the result, and cause the same to be recorded as provided in the general law concerning elections, as far as applicable.

Commissioners Franklin County v. State ex rel. Patton, 24 Fla., 55, 3 So. Rep., 471.

Ibid.

1214. (862.) Form of ballots.—At said election the ballot used shall be a plain white piece of paper, and having written or printed on one side thereof either "For Selling" or "Against Selling."

Ibid.

1215. (863.) Results of election.—Should a majority of the votes legally cast at any such election be against selling, then no intoxicating liquors, wines or beer shall be sold in the county in which said election was held until otherwise

determined by an election, which shall not be held oftener than once in every two years, but should a majority of those legally voting cast their ballots for selling, then such liquors, wines or beer may be sold in said county until otherwise determined by an election to be held in pursuance of this chapter: Provided, That intoxicating liquors, either spirituous, vinous or malt, or patent alcoholic bitters shall not be sold in any election district in which a majority vote was cast against the same at said election: Provided, further, That should it be determined at said election that liquors, wines or beer be sold in the county in which said election was held, then the person or persons wishing to make such sales shall obtain a license and pay all such tax or taxes as may be prescribed by law for carrying on such business.

(Refunding license: See Ch. 5479, Appendix.)

1216. Proceeding to test legality of elections prohibiting sale of liquor.—Any resident of any county in this State in which an election may be held or which may hereafter be held to determine whether the sale of intoxicating liquors, wines or beer should be prohibited in such county, shall have the right to test the legality and regularity of such election by bill in equity in the circuit court of such county to be filed against the county commissioners thereof; and in case any such election shall be adjudged to be illegal and void in any such suit such judgment shall have the effect of nullifying such election in toto as to all inhabitants of such county whether they were parties to such suit or not: Provided, No such suit shall be brought to test the validity of any such election unless the same shall be instituted within three months after the recording of the declaration of the result of any such election in the minutes of the board of county commissioners.

Ch. 5247, Sec. 1, Acts 1903.

1217. (864.) License to be granted where majority vote for sale.—If such county at such election votes in favor of the sale of such liquors, within such county, then any person or persons in any precinct which at said county election voted in favor of the sale of such liquors, paying the proper license tax to the proper officer in said county, shall have granted to him proper license for selling such liquors in such precinct.

Ch. 3700. Acts 1887, Sec. 2.

Butler et al. v. State, 25 Fla., 347, 6 So. Rep. 67.

1218. Application for permit, to whom made and when granted.—Any person, firm or corporation wishing to sell liquors, wines or beer in any election district, shall make ap-

Ch. 4550, Acts 1893, Sec. 1., amending Sec. 865 Rev. Stats. 1892.

plication to the board of county commissioners of the county at a regular meeting held not earlier than the month of August, asking the board to grant to the applicant the right to sell such liquors, wines or beer in such election district, and praying for a permit to make such sales.

Ib., Sec. 2, amending Sec. 866, Rev. Stats. 1892.

1219. Requisite of application.—The board of county commissioners of each county shall, at their regular meeting held in June of each and every year, revise the registration list of each election district of the county, striking therefrom the names of all persons disqualified from any cause. The application for permit to sell liquors, wines or beer must be signed by a majority of the registered voters of the election district as shown by the registration list at the date of application, each signature to be made in the presence of at least two credible witnesses, and shall be accompanied by the applicant's affidavit that each and every name or mark affixed to such application was the act and deed of the person purporting to sign the same, that here was no fraud, bribery or deception in procuring such signatures or marks and that all such signatures and marks were obtained after the revision of the registration list in June.

State ex rel. v. Commissioners Sumter County, 22 Fla., 364; State ex rel. v. Commissioners Sumter County, 22 Fla., 1; County Commissioners Polk County v. Johnson & Co., 21 Fla., 578; State ex rel. v. County Commissioners Jefferson County, 20 Fla., 425; State ex rel. v. Brown, 19 Fla., 563.

Ch. 4055, Acts 1891, Sec. 7.

1220. (867.) Publication.—Said application, with the signatures or marks thereto attached, shall be published in full at the applicant's expense, in a newspaper published in the county, for the space of two weeks before the board meets to hear the application; but if there be no newspaper published in the county, then a copy of the application with the signatures or marks shall be posted at the court house and in the election district for a like period.

County commissioners Polk County v. Johnson & Co., 21 Fla., 578.

Ibid.

1221. (868.) No license to issue without permit.—No license to sell liquors, wines or beer shall issue to any person, firm or corporation, unless a permit be presented from the board of county commissioners; and Section 1217 shall be limited by and construed with this section.

(For penalty for violation of local option laws, see Sections 3550-3564.)

CHAPTER XVI.

METHODS OF OBTAINING PERMIT TO SELL LIQUORS, WINES OR BEER IN CERTAIN CASES.

1222. Application to board of county commissioners. Any person, firm or corporation wishing to sell liquors, wines and beer in any election district wherein a majority of the registered voters have, since October 1, 1897, petitioned for a permit to sell liquors, wines and beer, shall make application to the board of county commissioners of the county at a regular meeting asking the board to grant to the applicant the right to sell liquors, wines and beer in such election district and praying for a permit to make such sales. Ch. 4747, Acts 1899, Sec. 1.

1223. County commissioners to give public notice.—The application shall be filed with the board of county commissioners on or before any regular meeting, and said application shall lie over until the next regular meeting of the board of county commissioners thereafter. When said application is filed the board shall immediately thereafter give public notice in some newspaper published in the English language in the precinct in which such application for sale is made, and if no paper is published in such precinct, then by posting in three public places therein; if there be no such paper then in some other paper published in the county, and if there be no paper published in the county, then by posting for thirty days at the court house of the county and by posting in three conspicuous places in the precinct for which such license is sought to be obtained, setting forth the fact that such application has been filed with said board and calling on any citizen of such election district who may desire to do so, to show cause, if any there be, why such permit shall not be granted to the applicant, which cause shall be shown by the next regular meeting thereafter. Said notice shall contain the name of the applicant and the election district in which the permit is desired and shall be published once a week until the next regular meeting of the board, and the cost of the publication of said notice to be paid for by said applicant. If at such next regular meeting the board shall find that no legal cause exists why the permit should not be granted and that the applicant is twenty-one years of age and a sober, law abiding person, of good character, then a permit shall be given the applicant by the board of county commissioners, to sell liquors, wines and beer as prayed for. Ib., Sec. 2.

1224. When not to grant permit.—The board shall not grant a permit in any case in the absence of affirmative evi- Ib., Sec. 2.

dence of the applicant's having complied with this chapter, and of his possessing the qualifications required for such permit: Provided, That the first Tuesday in any month shall for the purpose of this chapter be the day for the regular meeting of the county commissioners: Provided, That no person who has been refused a license or permit by the county commissioners for legal cause shall be permitted to renew his application for license or permit, to file a new application for license or permit, until the expiration of a year from the date of such refusal.

Ib., Sec. 3.

1225. Not granted in counties voting against sale.—That no permit to sell liquors, wines and beer shall be granted in any election district or county where a vote has heretofore been taken, or may hereafter be taken, under the provisions of Article 19 of the Constitution of the State of Florida, and said vote has been or may be against the sale of intoxicating liquors, wines and beer.

Ib., Sec. 4.

1226. Applicant must be sober, law abiding citizen.—If it be made to appear to the board of county commissioners that the applicant for a permit to sell liquors, wines and beer is not a sober, law abiding person, or is not a person of good character, then such permit shall be refused. Nothing in this chapter shall be construed to authorize said board to refuse such a permit when the applicant is twenty-one years of age, sober, law-abiding and of good character, and a permit in such precinct has been granted for the fiscal year ending October 1, 1899, and has complied with the other provisions of this chapter.

Ib., Sec. 5.

1227. Company must give names of all partners.—No license to sell liquors, wines and beers shall issue to any person or persons doing business as a company under the provisions of this chapter unless the applicant or applicants shall first file an affidavit giving the name or names of all persons who compose said company or partnership.

(For penalty for selling liquor without permit, see Section 3550.)

CHAPTER XVII.

OF HOTELS.

Ch. 1999, Acts 1874, Sec. 1.

1228. (870.) Hotels defined.—Every house kept in this State for the accommodation of twenty-five or more lodgers or boarders is hereby declared to be a hotel.

1229. (871.) Rules and regulations.—Every proprietor or manager of a hotel is authorized and empowered to prescribe and establish reasonable rules and regulations for the government and management of the hotel and its occupants and employees, and every lodger, boarder, guest or person staying, sojourning or employed in said hotel shall conform to and abide by said rules and regulations, so long as he shall remain in or at said hotel; and said rules and regulations shall be held and deemed to be a special contract and agreement between the proprietor or manager of said hotel and each and every lodger, boarder, guest, employee and person staying or sojourning at or in said hotel, and shall regulate, fix and control the liabilities, responsibilities and obligations of each, both and all parties; which said rules and regulations shall be printed in the English language and posted, together with a copy of Section 1231, in each bed room and in some public place, such as the office or hall in the hotel. Ib., Sec. 2.

1230. (872.) Safe to be kept.—An iron safe shall be kept in every hotel in this State for the safe keeping of the valuables of its occupants. Ib., Sec. 3.

1231. (873.) No liability for valuables unless deposited. The proprietor or manager of a hotel in this State, shall, in no event, be liable or responsible for any loss of any money, jewelry, or precious stones of any kind whatever, belonging to any lodger, boarder, guest or occupant of or in said hotel, unless the owner thereof shall make a special deposit of said property and take a receipt in writing therefor from the proprietor or manager or a clerk in the office of said hotel, which receipt shall set forth the value of said property. Ib., Sec. 4.

1232. (874.) Fastenings of bed rooms.—Each bed room shall be furnished or secured with a good, substantial lock and key and a bolt on the inside to fasten the same. Ib., Sec. 4.

(Fire escapes in hotels, see Sections 3695-3697.)

CHAPTER XVIII.

OF FENCES.

1233. Requirements of fence.—All fences or enclosures of land shall be substantially constructed, whether with rails, logs, post and railings, iron, steel, or other material, and not less than five feet high; to the extent of two feet Ch., 5038, Acts 1901, Sec. 1, amending Rev. Stats. 1892, Sec. 875.

from the ground there shall not be a space between the material used in the construction of any fence greater than four inches: Provided, That when any fence or enclosure shall be made with a trench or a ditch, the same shall be four feet wide; and in that case the fence shall be five feet high from the bottom of the ditch to the top of the fence.

Ch. 3619, Acts 1885, Sec. 2.

1234. (876.) Consequence of not having lawful fence. If any trespass or damage shall be committed on any garden, orchard, plantation or settlement, not being fenced or inclosed as above provided, by the irruption, breaking in or straying of any cattle, horse, sheep, goat or swine, the owner of the same shall not be liable to answer for such trespass, or to make good or satisfy any damage or injury that shall happen or be committed by reason thereof; and in case any person shall kill, maim, hurt or destroy, or cause to be killed, maimed, hurt or destroyed any such animal so trespassing or breaking into any garden, orchard, plantation or settlement not fenced or enclosed in manner as by this chapter is directed, such person shall answer and make good to the owner thereof all such injuries and damages he shall sustain thereby; the same to be recovered before any court having jurisdiction of the same.

Ch. 5038, Acts 1901, Sec. 2, Revised.

1235. Wire fence against cows and horses.—All wire fences made of barbed wire, not less than five feet high, tightly stretched on posts not more than twenty feet apart, the bottom wire not less than eighteen inches from the ground, the second wire not more than twelve inches above the first, and the third wire not more than eighteen inches above the second, and the fourth wire not more than twelve inches above the third, shall be a legal fence to the extent of affording the same protection to the owners of such fences against cows and horses, as provided in the foregoing section.

Ch. 4761, Acts 1899, Sec. 1.

1236. Passage way to water must be given. Procedure. Every person, company or corporation who has fenced lands lying adjacent to any stream or lakes in this State or who may hereafter fence up such lands, are hereby required to grant lanes or passage ways to said streams or lakes, such lanes or passage ways to be at the most accessible point and where needed. If the party making the application and the party applied to cannot agree as to the width and location of such lanes or passage ways, then the parties making such application shall choose one disinterested person to act for them and the party to whom application is made shall choose

a like person to act for him or them, and these two shall choose a third person and the three disinterested persons shall determine the location and width of such lane or passage way to be granted: Provided, That the provisions of this chapter shall apply only to wild and uncultivated lands: Provided, further, That written application for such lanes or passage ways be made to such person, company or corporation by not less than five citizens of this State who are owners of cattle or other stock which are dependent for water upon such streams or lakes at any season of the year: And Provided, further, That when the person, company or corporation applied to for such lanes or passage ways owns the land through which same are to be made, then the person making such application shall bear all the expense of constructing such lanes and passage ways and maintaining the same so long as said lanes or passage ways are required by those making such application: Provided, That nothing in this chapter shall apply to lakes less than five miles in circumference or to any lake around which all the lands are owned by any one individual.

1237. When parties fail to comply with this chapter. Any person, corporation or company having fenced or who shall hereafter fence up lands lying adjacent to any lakes or streams in this State, as provided in the preceding section, and who shall fail to comply with the provisions of the same within thirty days after the receipt of such notice or petition, as is provided for in the preceding section, then the applicants shall proceed to open the same under the condemnation laws as they now exist or may hereafter exist. Ib., Sec. 2.

1238. Disposition of dilapidated fence.—Whenever it shall appear to any board of county commissioners in any county in this State, that any fence made or constructed, wholly or in part, with barbed wire is in such a dilapidated condition that there is danger of horses, cattle, sheep, goats, hogs or other domestic animals being injured by coming in contact with the same by reason of it being in such dilapidated condition, and is unfit for service as a fence, said county commissioners shall at once serve notice to all whom it may concern, by advertising in some newspaper published in the county where such dilapidated fence is located, not less than four weeks, and if no paper is published in the county, then by posting at the court house door and postoffice located at the county seat, and at the postoffice in the commissioner's district in which said fence is located, that said fence is in such a dilapidated condition; and unless the Ch. 4937, Acts 1901, Sec. 1.

owner, or agent of said owner, put the same in good repair within thirty days after the expiration of said notice has been given, and pay the cost of advertising and posting notices, then said county commissioners shall sell at public sale said barbed wire so connected with said fence for the highest and best price, and the proceeds thereof, after deducting all costs of advertising and selling, shall be deposited with the county treasurer, in the county in which such sale is made, and remain in his custody for one year; and if by that time the proceeds are not claimed by the owner or his or her authorized agent then said proceeds are to go to the general funds of the county in which said sale was made.

June 11, 1823, Sec. 8.

1239. (878.) Prohibition of stakes, etc.—No planter or other person not having a lawful fence shall fix or cause to be fixed in any of his enclosures, any canes or stakes or any thing that shall or may kill or maim, hurt or destroy any cattle, horses, sheep, goat or swine, under penalty of ten dollars for every such offence, to be recovered before the proper court; one half of the penalty thereof to go to the informer and the other half to the county.

Ib., Sec. 5.

1240. (879.) Right to land not in issue.—In all trials to be had by virtue of this chapter, the right to the land on which the trespass or damage shall be said to be done, of the party in possession thereof, shall not be brought into question, but the same shall be taken for granted for all intents and purposes.

(See Sec. 3424—Trespass on lands where fence dispensed with.)

CHAPTER XIX.

OF WEIGHTS AND MEASURES.

Ch. 4975, Acts 1901, Sec. 1.

1241. Standards of weights.—The following standard of weights and measures shall be the standard of weights and measures throughout the State:

One standard bushel shall contain 2,150, 2-5 solid inches.

One liquid gallon shall contain 231 solid inches.

The weights and measures shall be as follows:

Wheat, per bushel, 60 pounds avoirdupois.

Corn, shelled, per bushel, 56 pounds avoirdupois.

Corn, on cob with shuck, 70 pounds avoirdupois.

Sorghum seed, per bushel, 56 pounds avoirdupois.
Barley seed, per bushel, 48 pounds avoirdupois.
Oats, per bushel, 32 pounds avoirdupois.
Bran, per bushel, 20 pounds avoirdupois.
Corn meal, per bushel, 48 pounds avoirdupois.
Beans, shelled, per bushel, 60 pounds avoirdupois.
Beans, velvet, in hull, per bushel, 78 pounds avoirdupois.
Beans, castor, shelled, per bushel, 48 pounds avoirdupois.
Millet seed, per bushel, 50 pounds avoirdupois.
Beggar weed seed, per bushel, 62 pounds avoirdupois.
Irish potatoes, per bushel, 60 pounds avoirdupois.
Sweet potatoes, per bushel, 60 pounds avoirdupois.
Turnips, per bushel, 54 pounds avoirdupois.
Onions, per bushel, 56 pounds avoirdupois.
Salt, per bushel, 60 pounds avoirdupois.
Peanuts, per bushel, 22 pounds avoirdupois.
Chufas, per bushel, 54 pounds avoirdupois.
Rye, per bushel, 56 pounds avoirdupois.
Apples, dried, per bushel, 24 pounds avoirdupois.
Apples, green, per bushel, 48 pounds avoirdupois.
Quinces, per bushel, 48 pounds avoirdupois.
Peaches, dried, per bushel, 33 pounds avoirdupois.
Peaches, green, per bushel, 54 pounds avoirdupois.
Cotton seed, per bushel, 32 pounds avoirdupois.
Cotton seed, Sea Island, per bushel, 46 pounds avoirdupois.
Plums, per bushel, 40 pounds avoirdupois.
Pears, per bushel, 60 pounds avoirdupois.
Guavas, per bushel, 54 pounds avoirdupois.

1242. Standard to govern.—All contracts hereafter made within this State for work to be done or anything to be sold or delivered by weight or measure shall be taken and construed according to the standard of weights and measures hereby adopted as the standard of this State. Ib., Sec. 2.

1243. Requirements before selling.—All merchants, commission merchants, grocers, provision dealers, store keepers and other persons, before selling or offering for sale any grain, flour, meal, grits, corn, wheat, rye, oats, bran, beans, Irish potatoes, sweet potatoes or peanuts, already put up, packed or placed in any sack, bag or barrel, in original packages shall have marked or stamped or stenciled upon such sack, bag or barrel, so sold or offered for sale, with its contents in figures, at least one inch in length, the exact weight in pounds avoirdupois of such bag, sack or barrel, with its contents. If the bag, sack or barrel is of a dark or black Ch. 4996, Acts 1901, Sec. 1.

color such figures shall be marked, stamped or stenciled in light colored ink or pencil; if the bag, sack or barrel is of a light color, then the marking, stamping or stenciling shall be in black or dark pencil, but in all cases the stamping, marking or stenciling shall be plain, legible, and placed conspicuously on such bag, sack or barrel.

(Penalty for selling by illegal or untested weights and measures, see Sections 3715-3716.)

CHAPTER XX.

INSPECTORS OF TIMBER AND LUMBER.

Ch. 2091, Acts 1877.

1244. (884.) Appointment and removal of inspectors. It shall be the duty of the Governor to appoint a sufficient number of timber and lumber inspectors in each county of the State, who shall hold their offices for four years, subject to removal by the Governor for good cause shown, and the said inspectors shall receive the compensation and be subject to the rules now prescribed by law.

Ch. 3898, Acts 1889.

1245. (885.) Inspectors to qualify and give bond.—Such inspector shall qualify and give bond in the sum of five hundred dollars before he shall be commissioned, in like manner, and said bond to be approved in like manner, as is provided by general law concerning the qualifying and bonds of county officers.

Nov. 21, 1828, Sec. 2.

1246. (887.) Duties of inspector.—When any person shall desire the attendance and service of any of such inspectors of lumber, he shall give notice and inform all parties concerned and interested, of his intention of calling in the aid of such inspector, at least three days previous to the time when he shall require said inspector to inspect and measure the lumber in question; and it shall be the duty of the inspector, when summoned, to attend at the place and the day to which he may be called, and faithfully measure all lumber he may be required to do, and any report and return he may make concerning thereof shall be received as the correct measurement of the same: Provided, nevertheless, That the several parties interested may, at all times, be at liberty to establish the incorrectness of such return and report, in any suit regularly commenced in any court of this State having jurisdiction of the same.

Ch. 3898, Acts 1889, Sec. 4.

1247. (888.) Measure to be used.—Doyle's rule and log book for the measurement of saw logs is adopted as the

standard rule for the measurement of saw logs, whether round or square, which are required to be scaled or measured within the limits of this State.

1248. (890.) Fees.—The said inspectors shall receive the following fees for their services, to-wit: Two dollars for every twenty miles they may travel in going to and from the place at which they may be required to attend, and twelve and a half cents for every thousand superficial feet of ranging lumber, and twenty-five cents for every hundred cubic feet of live oak or cedar timber or lumber, and fifty cents for every thousand staves they may inspect and count; which said fees may be recovered in any court having jurisdiction thereof, from the several parties interested in the measuring and inspecting the lumber measured and inspected, who are hereby made jointly and severally liable therefor. Ch. 262, Sec. 1, Jan. 13,,, 1849, Ch. 1135, Sec. 1, Feb. 8, 1861.

1249. (889.) Penalty.—If any person shall transport from any county of this State any lumber or staves measurement without complying with the provisions of Section 1246 of this chapter, after he has been notified by any person interested in said lumber of his wish and intention to have the same so measured, he shall forfeit to the State a sum not exceeding two hundred dollars. Nov. 21, 1828, Sec. 2.

1250. Duty of inspector.—When a commissioned timber inspector or other person in this State shall furnish specifications or certificates of inspection of sawn pitch pine timber inspected by him or under his commission, each specification or certificate of inspection furnished by him shall show and describe correctly the classification of each piece of timber embraced in the specification or certificate of inspection. Ch. 4415, Acts 1895, Sec. 1.

1251. Classification.—For the purpose of this chapter the clasification of said timber shall be "Class A," and "Class B," and "Class C." Ib., Sec. 2.

1252. "Class A."—Within "Class A" shall be included only timber of the following description: Timber showing heart from end to end on all faces, strictly square edged, sound and saw-butted, and free from circle shakes. Ib., Sec. 3.

1253. "Class B."—Within "Class B" shall be included only timber of the following description: Timber showing heart from end to end on one face, heart on three other faces, strictly square edged, on at least two corners sound and saw-butted. Wane may be allowed on one corner to Ib., Sec. 4.

the extent of one-sixth of the length of each stick. Width for one wane on one corner not to exceed two and one-half inches across at the widest part. If wane on two corners, the combined width of same shall not exceed two and one-half inches. No middle wane allowed.

Ib., Sec. 5.

1254. "Class C."—Within "Class C" shall be included all timber not included in "Class A" or "Class B."

Ib., Sec. 7.

1255. Duty of Governor.—It shall be the duty of the Governor to revoke the commission of any commissioned timber inspector in this State violating any of the provisions of this chapter, upon satisfactory proof to him of such violation.

(For penalties for violation of provisions of this chapter, see Sections 3708-3711.)

CHAPTER XXI.

PROTECTION OF LOG BRAND.

Ch. 4738, Acts 1899, Sec. 1.

1256. Stamp or brand for logs.—Any person engaged in this State in the business of getting out, buying, selling or manufacturing saw logs, may adopt a stamp brand for such logs of such design as he may select.

Ib., Sec. 2.

1257. Recorded by clerk of circuit court.—Such person may execute a written declaration that he has adopted such brand, describing it, and after acknowledgment of such declaration before any officer authorized to take acknowledgments of deeds, may have the same recorded by the clerk of the circuit court, in the record of mortgages, in any county in which he may desire to own or have in possession saw logs.

(Penalty for unlawful use of recorded brand, see Section 3709.)

Ib., Sec. 4.

1258. May prevent use by others.—Any person who has had his brand recorded as aforesaid in any county, may prevent other persons from using, as aforesaid, the same in said county, by a writ of injunction, restraining such use.

Ib., Sec., 5.

1259. Prima facie evidence ownership.—Any log found in any county branded with a brand recorded in said county by any person aforesaid, shall be deemed prima facie to be the property of such person.

Ib., Sec., 6.

1260. Where two or more brands the same.—In case there shall be recorded in the same county two or more

brands the same, or substantially the same brand, the brand first recorded shall be the lawful brand, and the other shall be of no effect under this chapter.

CHAPTER XXII.

FERTILIZERS AND INSPECTORS THEREOF.

1261. Appointment of State Chemist.—The Governor shall appoint a State Chemist, who shall hold his office for the term of four years, and until his successor is appointed and qualified; he shall be an expert chemist, and have his office in the capital of the State of Florida, and his duties shall be such as hereinafter provided. The Governor may appoint an assistant to the State Chemist when necessary. Ch. 4159, Acts 1893, Sec. 1. amendng Sec. 891, Rev. Stats. 1892.

(See, also, Ch. 5452, Appendix.)

1262. Who inspectors of fertilizers.—The State Chemist and the Assistant State Chemist shall be inspectors of fertilizers; they shall be under the general direction and supervision of the Commissioner of Agriculture. Ch. 4983, Sec. 1, Acts 1901.

1263. Duty of State Chemist.—It shall be the duty of the State Chemist to analyze samples of fertilizers that may be offered for sale in this State, and for this purpose he is authorized and directed to take or have taken by the Assistant State Chemist from any brand of fertilizers offered for sale in this State, from not less than ten original packages of said fertilizers which may be in the possession of any manufacturer, dealer or person using the same, two samples not to exceed one pound each in weight, one sample to be returned by the State Chemist and the other sample to be sent in a sealed bottle or can, to the Commissioner of Agriculture who shall keep the same. And in case any manufacturer shall request another analysis, then the sample retained by the Commissioner of Agriculture, at the request of any manufacturer, shall be sent to any chemist whom the Commissioner of Agriculture, State Chemist and manufacturer shall agree upon. Ib., Sec. 2.

1264. Commercial fertilizer to be labelled.—Every bag, barrel or other package of commercial fertilizers, cotton seed meal, castor pomace, tobacco stems, tobacco dust, or Ib., Sec. 3.

tobacco meal, manufactured, sold in, or imported into this State, shall have securely attached on label, and plainly stamped thereon the number of net pounds of fertilizer in the package, the name, brand or trade mark under which the fertilizer is sold, the name and address of the manufacturer and the chemical analysis, stating the percentage of ammonia, and the source from which the same is derived, the percentage of potash soluble in water, the percentage of available phosphoric acid, and the percentage of insoluble phosphoric acid, the percentage of moisture contained therein, also the maximum percentage of chlorine therein, and all other ingredients from which it is compounded, also the stamp showing the payment of the license fee provided for in this chapter.

Ib., Sec. 3.

1265. Duty of sheriff.—The sheriffs of the counties of this State are hereby authorized, and it is hereby made their duty to seize and sell at public sale, each and every bag, barrel or package of commercial fertilizer, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, manufactured, imported into or sold in this State, which shall not have securely attached the tag or label and stamp mentioned in the preceding section: Provided, That should the owner show to the satisfaction of the sheriff that such tag or label or stamp had been attached and the same had become detached, the sheriff shall release the same without cost to the owner.

Ib., Sec. 3.

1266. Fertilizers in bulk.—All fertilizer shipped in bulk to the consumers shall be subject to penalties provided for by law upon the attempt to evade the payment of such tax: Provided, That nothing in this chapter shall be construed to restrict or avoid sales of acid phosphate, kainit or other fertilizer material in bulk to each other by importers, manufacturers or manipulators who mix fertilizer material for sale, or as preventing the free and unrestricted shipment of these articles in bulk to manufacturers or manipulators who mix fertilizer material for sale. All moneys or proceeds derived from the seizure and sale of fertilizers shall be covered into the State treasury.

Ib., Sec. 5.

1267. To file name of principal agent with Commissioner of Agriculture.—Any manufacturer or importer of or agent for the sale of commercial fertilizers, previous to offering the same for sale in this State, shall file with the Commissioner of Agriculture annually a paper giving the name of his principal agent or agents in the State of Florida, also the name

and guaranteed analysis, under oath, of the fertilizer or fertilizers offered for sale by him.

1268. Fee to be paid by the manufacturer.—Every manufacturer, importer, agent or seller of any commercial fertilizer, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, shall pay to the State Treasurer a fee of twenty-five cents for each and every ton offered for sale in this State: Provided, That when the manufacturer or importer shall have paid the fees herein required for any person acting as agent or seller for any manufacturer or importer, such agent or seller shall not be required to pay the fee named in this section. Ib., Sec. 6.

1269. Commissioner of Agriculture to furnish stamps or labels.—It shall be the duty of the Commissioner of Agriculture to furnish the manufacturers, importers or dealers with stamps or labels to be attached by the manufacturers to each package of fertilizer sold or used in this State, which stamp or label shall be accounted for by the Commissioner of Agriculture in his monthly report to the Governor; such stamps shall be printed in such form as may be prescribed by the said Commissioner of Agriculture. Ib., Sec. 7.

1270. How manufacturers obtain stamps or labels. Each manufacturer and importer of or dealer in fertilizers, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, shall forward the money for fertilizer stamps or labels with his letter of request, directed to the State Treasurer. Said letter of request shall contain the statement of tons of fertilizers for which stamps or labels are required and the number of packages contained in each ton. The State Treasurer shall hand to the Commissioner of Agriculture the letter of request for fertilizer stamps or labels, which order shall be filled by the Commissioner of Agriculture at once if found correct. Ib., Sec. 8.

1271. Analysis of fertilizer purchased from manufacturer.—Any person purchasing any fertilizer from any manufacturer or vendor in this State for his own use, such person being a citizen of this State, may submit fair samples of said fertilizer to the Commissioner of Agriculture for analysis. But in order to protect the manufacturer or vendor from the submission of analysis of spurious samples, the person selecting the same shall do so in the presence of two or more disinterested persons, which samples shall be taken from one or more packages and bottled, corked and sealed Ib., Sec. 9.

in the presence of said witnesses, and this sample package or bottle placed in the hands of a disinterested person, who shall forward the same, at the expense of the purchaser, to the Commissioner of Agriculture when the person so desires; and upon the receipt by him of any such sample packages, the Commissioner of Agriculture is hereby authorized to require the State Chemist to analyze the same, and he shall return to such purchaser or purchasers a certificate or certificates of analysis. The certificate shall in all cases set forth the component parts of said fertilizers, with their respective qualities, date of analysis and name or names of persons submitting the samples, and to be signed by the State Chemist, who is hereby required to keep an accurate account of the same; and the said certificate or record, when verified by the affidavit of the State Chemist, shall be competent evidence in any court of law or equity in this State.

1272. When party is defrauded in purchasing fertilizer. Any person purchasing any fertilizer or fertilizing materials from any manufacturer or vendor who shall upon an analysis by the State Chemist, discover that he has been defrauded by reason of adulteration or deficiencies of constituent elements, either in quality or quantity, in the fertilizing materials so purchased, shall recover in any action he may institute, upon proof of the fact, twice the amount paid to or demanded by the manufacturer or vendor for the fertilizer or fertilizing material so purchased. But in all cases where the vendor is an agent for the manufacturer, or sub-agent of such agent, the judgment of the court shall be rendered against the manufacturer. In case any purchase be made of any manufacturer or agent of any person or persons residing out of the State of Florida, manufacturing, compounding or furnishing for sale any such commercial manure or manufactured fertilizer, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, the purchaser thereof, may, at his option, proceed by attachment as now provided by law in case of non-resident and absconding debtors, against any such property, rights or credits of any person or persons selling, manufacturing, compounding or furnishing said manures or fertilizers when such property, rights or credits can be found within the limits of the State.

Ib., Sec. 10.

1273. Meaning of "commercial fertilizer."—The term "commercial fertilizer" as used in this chapter, shall be taken to mean all substances containing nitrogen, potash or phosphoric acid; also cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, sold, offered or exposed

Ib., Sec. 11.

for sale and ordinarily used for manurial purposes, excepting barn yard or stable manure and crude cotton seed.

1274. Certificate.—No person shall sell or expose for sale in this State any pulverized leather, hair or wool waste, raw, steamed, roasted, or in any form as a fertilizer or as an ingredient of any fertilizer or manure, without an explicit printed certificate of the fact; said certificate shall be conspicuously affixed to every package of fertilizer or manure, and to accompany or go with every parcel or lot of the same. Ib., Sec. 12.

1275. State Chemist to furnish analysis of fertilizer. The State Chemist, upon application, shall furnish at any time to an applicant a full analysis of any brand of fertilizer required. Said analysis shall set forth the percentage of ammonia, potash soluble in water, of available and insoluble phosphoric acid, with the statement of the commercial value of each ingredient, which valuation shall be uniform and not above the real value of such ingredient. Ib., Sec. 13.

1276. Traveling expenses of State Chemist.—The actual traveling expenses of the State Chemist and his assistant incurred in the execution of this law and inspection of fertilizers, shall be paid on proper vouchers approved by the Commissioner of Agriculture: Provided, Such expenses shall not exceed $750.00 per annum; and the Comptroller is hereby authorized to issue his warrant for the payment of the same out of any funds in the Treasurer's hands derived from the sale of fertilizer inspection tags or stamps. Ib., Sec. 14.

1277. Commissioner of Agriculture to establish rules, etc.—The Commissioner of Agriculture shall have authority to establish such rules and regulations in regard to the inspection, analysis and sale of fertilizers, chemicals and cotton seed meal not inconsistent with the provisions of this chapter, as in his judgment will best carry out the requirements thereof. Ib., Sec. 15.

1278. (908.) Annual report to Governor.—He shall also make a report of the operations of his office to the Governor of the State, annually, giving the number of analyses made, the amount and proceeds of his office; said report to be presented to the Legislature at its bi-ennial sessions in the same manner as the Auditor's and State Treasurer's reports are made. Ch. 3858, Acts 1889, Sec. 12.

1279. (810.) Compensation of Chemist and inspectors. The State Chemist shall receive a salary of two thousand Ib., Sec. 14.

dollars per annum, and the inspector shall receive ten cents for each ton inspected, but shall in no case receive more than eight hundred dollars per annum.

Ib., Sec. 15.

1280. (911.) Suitable appliances to be provided for Chemist.—The Governor shall provide a suitable laboratory, furniture and all the necessary chemicals for the State Chemist out of any funds in the State treasury not otherwise appropriated, the same to be paid back to the State treasury out of the funds accruing from the inspection of fertilizers as hereinbefore provided.

(For penalties for violations of provisions of this chapter, see Sections 3723-3727.)

CHAPTER XXIII.

OF STEVEDORES.

Ch. 1740, Sec. 1, Feb. 7, 1870; Ch. 2032, Sec. 1, Feb. 18, 1874.

1281. (925.) Appointment and bond of stevedore.—Any board of commissioners of pilotage of this State may grant licenses to competent and trustworthy persons to act as stevedores in the port and harbor for which said board is appointed; but such board shall only grant such number of licenses as it may deem necessary, having due regard to the business of the port and harbor; and no person shall be licensed except such as on examination prove competent to serve as stevedores. Said board shall require from each person licensed satisfactory bond, in penalty not to exceed three hundred dollars, for the proper performance of his duties as stevedore. But the said board of commissioners shall not appoint any person to act as stevedore who has not been a resident of the State six months previous to the date of his commission.

(Acting as stevedore without license, see Section 3742.)

Ch. 1740, Sec. 2.

1282. (926.) To hold during good behavior.—Persons so licensed shall hold their licenses during good behavior, but any license may be revoked by said board upon complaint, after due notice and hearing, if in the opinion of said board, the misconduct, neglect of duty or other cause of complaint shall be sufficient to justify such removal.

Ib., Sec. 6.

1283. (929.) Master may load his vessel with his own crew.—Nothing in this chapter shall be so construed as to prevent any master of a ship or vessel from loading his own vessel with his own crew.

1284. (930.) Certain charters void.—No action shall be maintained in this State to enforce or secure any right given by a ship charter in which charter is a provision giving the charterer, consignee or shipper a right in any way to interfere with the selection by the master or owner of a stevedore to load or unload his vessel. Every such charter shall be void in this State. Ch. 3757, Acts 1887, Sec. 1.

1285. (931.) Compensation not to be accepted for awarding vessel to stevedore.—It shall not be lawful for any person to accept directly or indirectly any compensation for awarding or causing to be awarded to any person the loading or unloading of any vessel. Ib., Sec. 2.

1286. (932.) Interference with awarding vessel forbidden.—It shall not be lawful for any person to control or attempt to control the owner or master of any vessel in awarding the loading or unloading of his vessel except by solicitation in his own behalf as a contracting stevedore regularly engaged in the business of stevedoring. Ib., Sec. 3.

(For penalties relative to loading and unloading vessels, see Sections 3743-3744.)

CHAPTER XXIV.

OF SHIPPING MASTERS.

1287. (933.) Appointment and duties.—There shall be created in and for the several ports of this State, one or more shipping masters, to be appointed by the mayor with the consent of the common council of each city or incorporated town in this State, whose business it shall be to provide and ship crews for vessels and seamen, in accordance with the laws of the United States, whenever required to do so, by proper authority, representing the vessels or owners. Ch. 1750, Acts 1870, Sec. 1.

1288. (934.) Bond, etc. — Before obtaining the license hereinafter provided for, said shipping master shall execute a bond, with two good and sufficient sureties, to be approved by the mayor, in the sum of $2,000, payable to the mayor and his successors in office, conditioned for the honest and faithful transaction of all business appertaining to his office and occupation; and if any shipping master, or any other person by his consent, procurement, advice or connivance, shall be found guilty of harboring, concealing or enticing away any marine or seaman from a vessel, or encouraging any Ib., Sec. 2.

marine or seaman to mutiny or disobey lawful orders, he or they shall, in addition to the punishment provided by law for every such offence under this chapter, forfeit for the use of the port or town for which he is appointed, not less than one hundred nor more than one thousand dollars; the cause to be tried in the proper court on complaint of the mayor or party aggrieved.

Ib. Sec. 3.

1289. (935.) License and regulation. — The mayor and council may grant license in conformity to this chapter, under such rules and regulations as they may prescribe, and such ordinances and orders as in their judgment may be most conducive to the interests of their port, and for the government of the shipping and for the welfare and protection of the marine and seamen, subject to the laws of the United States, and for the direction and government of said shipping masters as they may deem proper; and the same at any time may amend or revoke, and may impose fines for the violation of such rules, ordinances, orders and regulations, provided such fines so imposed by city or town authority under this chapter shall not exceed $50 for each offence in violating said rules, orders and regulations or ordinances.

(For penalty for acting without license, see Section 3745.)

CHAPTER XXV.

OF PROTECTION OF PORTS AND HARBORS.

Ch. 3298, Acts 1881, amended by Ch. 4370, Acts 1895, Sec. 1.

1290. (936.) Deposit of material in tide water regulated. It shall not be lawful for any person to discharge or cause to be discharged, deposit or cause to be deposited, in the tide or salt waters of any bay, port, harbor or river of this State any ballast or material of any kind other than clear stone or rock free from gravel or pebbles, which said clear stone or rock shall be deposited or discharged only in the construction or enclosures in connection with wharves, piers, quays, jetties, or in the construction of permanent bulkheads connecting the solid and permanent portion of wharves. It shall be lawful to construct three characters of bulkheads for retention of material in solid wharves. First. Clear stone or rock enclosures, or bulkheads, may be built upon all sides to a height not less than two and one-half feet above high water mark, and after the said enclosures have been made so solid, tight and permanent as to prevent any sand, mud or gravel or other material that may be dis-

charged or deposited in them from drifting or escaping through such enclosure, any kind of ballast may be discharged or deposited within same. The aforesaid enclosures may be constructed of wood, stone and rock combined, the stone and rock to be placed on the outside of the wood to a height not less at any point than two and one-half feet above high water mark. Second. A bulkhead may be built by a permanent wharf consisting of thoroughly creosoted piles not less than twelve inches in diameter at the butt end, to be driven close together and to be capped with timber not less than ten by fourteen inches drift, bolted to each pile, and one or more longitudinal stringers to be placed on the outside of the bulkhead and securely anchored by means of iron rods to piles driven within the bulkheads, clear rock to be on the inside of the bulkhead, to a height of not less than two and a-half feet above high water, and after this is done, ballast or other material may be deposited within the permanent enclosure so constructed. Third. A bulkhead may be constructed to consist of creosoted piles, as described herein, driven not exceeding four feet apart from center to center, inside of which two or more longitudinal stringers may be placed, and securely bolted to the piles. Inside of these longitudinal pieces two thicknesses of creosoted sheet piling are to be driven, each course of the sheet piling to make a joint with the other so as to form an impenetrable wharf, and within this permanent bulkhead so constructed, any ballast or other material may be deposited. No such enclosures, piers, quays or jetties shall be begun until the point whereat it is to be built shall have been connected by a substantial wharf with a shore or with a permanent wharf: Provided, That the owners of wharves may at any time, with the consent of the board of pilot commissioners of the port or harbor in which such wharves are situated, build wharves of clear stone or rock, or creosoted walls as hereinafter provided, on each side of their wharves from the shore to a point at which the water is not more than fifteen feet deep, and when such walls have attained a height of two and one-half feet above high water mark, and have been securely closed at the deep water end by stone or creosoted walls of the same height, any kind of ballast may be deposited in them. It is hereby made the duty of the pilot commissioners of the different ports and harbors of this State to designate by ordinance the depth of water at which enclosures, piers, quays, jetties and bulkheads may be built without obstruction to navigation within the bays, ports, rivers and harbors over which they respectively have jurisdiction. Nothing contained in this section shall interfere with any rights or privileges now enjoyed by riparian owners. While this sec-

tion empowers those who desire to construct the several characters of wharves, piers, quays, jetties and bulkheads, provided for and described herein, nothing in this section shall be so construed as to require any person not desiring to construct a permanent wharf by filling up with ballast, stone or other material, to construct under the specifications contained herein; and nothing in this chapter shall be so construed as to prevent any person from constructing any wharf or placing any pilings, logs or lumber in any waters where he would have heretofore had the right so to do.

Ch. 3142, Acts 1879, Sec. 3.

1291. (937.) Deposit on wharf, etc., regulated.—It shall not be lawful for any person to deposit or cause to be deposited on any wharf or quay, any ballast, stone, earth, or like material except such wharf or quay be so secured as to prevent such ballast or other material from washing into the waters of the harbor.

CHAPTER XXVI.

OF PILOT COMMISSIONERS.

Ch. 4171, Acts 1893, Sec. 1, amending Sec. 938, Rev. Stats. 1892.

1292. Pilot commissioners to be appointed and to act as port wardens.—The Governor, by and with the advice and consent of the Senate, shall appoint a board of pilot commissioners for each port in this State, to consist of five members, who shall have their offices for four years, unless sooner removed by the Governor; the said board is to consist of citizens of said port, and the said commissioners shall be empowered to act as port wardens and to perform all the duties of the same. They shall take the usual oath of office.

Ch. 4573, Acts 1897, Sec. 1, amending Sec. 939, Rev. Stats. 1892, and further amending Sec. 1, Ch. 5226, Acts 1903.

1293. Commissioners to examine and license pilots. Said board of commissioners shall examine persons who may wish to be licensed as pilots in all matters pertaining to the management of vessels; also in regard to their knowledge of the channel and harbor where they wish to act as pilots; and if upon examination they find them qualified to take command of all classes of vessels liable to enter that port, and thoroughly familiar with the channel and currents of the harbor, they shall appoint and license such a number of those found qualified as are requisite to perform the duties required of the pilots for that port; so that there shall not be more than twenty-five licensed pilots for the port of

Pensacola, nine for the port of Apalachicola, four for the port of Fernandina and Nassau Inlet, eleven for the port of St. Johns, eight for the port of Port Tampa, three for the port of Punta Gorda, three for the port of Charlotte Harbor, two for the port of St. Andrews, two for the port of Cedar Keys, ten for the port of Key West, and two for any other port not specifically mentioned in this chapter; and thereafter when vacancies occur in the number of pilots in any of the ports of this State, the commissioners of that port may, in their discretion, grant license as pilots heretofore provided until the number of pilots reaches the number allowed by this chapter for that port: Provided, however, That pilots who are now duly licensed shall hold their office according to law. Said pilots shall be entitled to hold their license and appointments during good behavior, and the said board shall require from each pilot satisfactory bonds for the faithful performance of his duties.

(For penalty for unlawfully personating pilot commissioner, see Section 3735.)

Ch. 5225, Acts 1903, Sec. 1, amending Sec. 940, Rev. Stats. 1892.

1294. Apprenticeship.—There may be indentured in each port of this State, one apprentice for every eight and five over eight or multiple of eight licensed pilots of such port; but every port may have one apprentice. Any person desiring to become a pilot's apprentice shall file with the board of pilot commissioners a written application approved by a majority of the licensed pilots of the port, one of whom shall signify his willingness to have such apprentice indentured to him; and if there be a vacancy in the number of apprentices allowed for such port, the board of pilot commissioners shall approve such application; and the applicant shall then, with the approval of his parent or guardian, be indentured as an apprentice to the licensed pilot who has signified his willingness to take such apprentice for the term of four years; and the indenture shall be recorded in the records of the board of pilot commissioners, and the said board shall thereupon assign the said apprentice to a regular pilot boat on the bar of such port. In filling vacancies in the number of licensed pilots for any port, the board of pilot commissioners shall prefer in the order of service, those who have served apprenticeship under this law: Provided, That no other requirements than those provided for by law shall be demanded of those who are serving as pilot apprentices.

State ex rel. v. Jones, 16 Fla., 306.

Ch. 1670, Acts 1868, Sec. 5.

1295. (942.) Revocation and forfeiture of license.—The said commissioners shall have power to revoke the license of any pilot for misbehavior, neglect of duty or drunkenness, or any other cause detrimental to the interest of commerce

and navigation. A pilot shall forfeit his license and authority as such by more than seventy-two hours' absence from his bar, except in case of sickness, or absence in the discharge of his duty.

Ib., Sec. 6.

1296. (943.) Records.—The said board shall keep a record of all their proceedings, including appointments, licenses, and revocation of licenses, which record shall be turned over to their successors in office.

Ib., Sec. 7.

1297. (944.) Fees.—The said board of commissioners shall receive the sum of twenty dollars from each pilot whom they examine, appoint and license, in lieu of all other fees and compensation.

Ch. 3161, Acts 1879, Sec. 2.

1298. (946.) Per diem to pilots in quarantine.—In all cases where a pilot shall be detained in quarantine by reason of having boarded any vessel in the discharge of his duty as such pilot, the said vessel or owners shall be required to pay to such pilot four dollars per day during the time of his necessary detention in quarantine.

Ch. 1893, Acts 1872, Sec. 1.

1299. (947.) Pilot bringing vessel in entitled to take her out.—Any licensed pilot who shall take or bring a steamer or vessel into port shall be entitled to take her out, and any other pilot taking out such steamer or vessel shall forfeit the full amount of pilotage to the pilot rejected; and the master of said steamer or vessel, or the owner or owners thereof, shall be bound to pay to the pilot rejected the fees as established by law, unless the master shall show good cause to the contrary, which shall be satisfactory to the board of commissioners.

Ch., 3160, Acts 1879; Ch. 1893, Acts 1872, Sec. 2.

1300. (948.) Rates of pilotage.—The board of pilot commissioners of each port may fix the rate of pilotage which shall be paid by any vessel entering their port; but in no case shall they fix the rates greater than the rates now provided by law, as follows: All steamers or vessels entering any port or leaving the same, shall be subject to pay to any licensed pilot performing duty on board, or to the pilot who shall first speak to such steamer or vessel, the following rates of pilotage: For steamers or vessels drawing six feet, or less than the same, two dollars per foot; for steamers or vessels drawing from six to ten feet, three dollars per foot; for steamers or vessels drawing from ten to fourteen feet, four dollars per foot; for steamers or vessels drawing from fourteen to twenty feet, five dollars per foot; for steamers

or vessels drawing over twenty feet, six dollars per foot. These rates shall apply to all steamers or vessels, whether owned wholly by citizens of this State or not: Provided, That all steamers or vessels carrying the regular United States mails, shall pay half pilotage only: Provided, further, That all steamers or vessels drawing less than six feet of water, and having a coastwise license, shall be exempt from paying whole or half pilotage, unless they employ a pilot.

1301. (949.) Pilot commissioners may make regulations for port.—Every steamer or vessel of any description, of the tonnage of twenty tons and upwards, while lying at anchor in any of the bays, ports, harbors or rivers of this State, where there is a board of pilot commissioners, shall during the night show such light as may be required by the port regulations established for the port; and it shall be lawful for the board of pilot commissioners to make and promulgate, in conformity with law, rules and regulations for the government and protection of the port. Ch. 3142, Acts 1879.

1302. (950.) Duties as to protection of ports.—The board of pilot commissioners of each port shall take such steps as may be necessary to detect any violation in their ports or waters within their jurisdiction of the laws for the protection of ports, harbors, bays and rivers; and they shall cause complaint to be made for the arrest of every offender against such laws. And the county commissioners of the county in which such pilot commissioners are appointed shall audit and pay the expenses of the board of pilot commissioners, which shall be incurred under this section, as other charges against the county are audited and paid. Ch. 3438, Acts 1883.

1303. (951.) Minimum tonnage of pilot boats on certain bars.—All pilots engaged in the business of piloting on the bars of those ports of this State into which have come and taken cargo, during the past five years, foreign owned sailing vessels of five hundred tons burden and upwards, at an average rate of not less than two hundred and fifty vessels per year, according to the records of the United States custom houses at such ports respectively, are required to pursue their said business of piloting for such ports on vessels of not less than twenty tons burden, and are prohibited from carrying on their said business on vessels of any less burden than twenty tons. Ch. 3753, Acts 1887, Sec. 1.

1304. (952.) Registration.—It shall be the duty of the pilot commissioners for those ports within this State that are within the provisions of the last preceding section, to register Ib., Sec. 2. amended by Sec. 1, Ch. 4371, Acts 1895, Revised.

such a number of vessels of not less than twenty tons burden as are in their opinion requisite and necessary to the proper piloting of vessels coming into such ports, and it shall be the duty of the pilot commissioners to provide a book for the purpose of such registration and to cause the same to be kept in the office open to the inspection of the public. Each registration shall set forth the name and tonnage of the pilot boat so registered, and for each registration the pilot commissioner making the same shall be entitled to demand and receive a fee of ten dollars ($10.00).

(For penalty, see Sec. 3736.)

Ch. 4046, Acts 1891, Sec. 1.

1305. Organization of board.—The board of commissioners of pilotage and port wardens of each and every port of this State shall have power to annually elect one of their members president, and another vice president, and to appoint one of their number secretary, and fix his compensation, who shall hold his office during the pleasure of the board, said compensation to be paid out of the receipts of the office. It shall be the duty of the secretary to keep, in such books as shall be provided for the purpose, a full, true and complete record of all their acts, proceedings, surveys and reports, and such books shall be open to the public inspection of any person interested therein; and the said board of commissioners shall have and use a common seal, and each commissioner and port warden shall have full power and authority to administer oaths, examine witnesses and take affidavits concerning the business of said office, and all willful false swearing under such oaths shall be deemed perjury, and shall be punished accordingly.

Ib., Sec. 1.

1306. Make rules and regulations.—The said board shall also have full power to make such rules and regulations for their own government and the discharge of their duties under this chapter as they may deem necessary and proper: Provided, however, That said board of commissioners of pilotage and port wardens shall adopt no rules and regulations which may conflict in any way with the rules and regulations of the State Board of Health now in force, or that may hereafter be adopted by said State Board of Health. They shall keep an office in the port or city for which they are appointed and shall have the exclusive right to perform all the duties of pilot commissioners and port wardens for the ports or cities for which they are appointed.

Ib., Sec. 2.

1307. To examine vessel.—It shall be the duty of said board, or some one of them, on being notified and requested

by any of the parties in interest to proceed in person on board of any vessel for the purpose of examining the condition and storage of cargo, and if there be any goods damaged on board said vessel they shall inquire, examine and ascertain the cause or causes of such damage, and to make a memorandum thereof, and enter the same in full upon the books of the office; and if, after the arrival in port of any vessel, the hatches shall be first opened by any person not a pilot commissioner and port warden, and the cargo, or any part thereof, shall come from on ship board in a damaged condition, these facts shall be presumptive evidence that such damage occurred in consequence of improper storage or negligence on the part of the persons in charge of the vessel, and such default shall be chargeable to the owner, consignee, master, or other person in interest (as part owner or master of said vessel), each and all of whom shall be primarily liable for such damages; and the said board shall be exclusive surveyors of any vessel which may have suffered wreck or damage, or which shall be deemed unfit to proceed to sea, and shall examine the condition of the hull, spars, sails, rigging, and all the appurtenances thereof, and they shall call to their assistance one or more carpenters, sail makers, riggers, shipwrights, or other person skilled in his profession to aid them in their examination and survey: Provided, Such person shall not be interested therein, and all parties so called shall be sworn, and shall each be allowed a fee of five dollars, to be paid by the person requiring said examination.

1308. To keep a record of examination, etc.—The said commissioners shall specify what damage has occurred, and record in the books of said office a full and particular account of all surveys held on said vessel. They shall also be the judges of the repairs necessary to render said vessel again seaworthy, or for the safety of said vessel and cargo on the intended voyage. They shall also have exclusive cognizance of all matters relating to the surveys of vessels and their cargoes arriving at such ports in distress or damage in said ports, and shall be the judges of its fitness to be re-shipped to its port of destination, or whether it shall be sold for the benefit of whom it may concern. They shall also, if called upon to do so, estimate the value of measurement of any vessel, when the same is in distress or libeled, and record the same in the books of said office. Ib., Sec. 8.

1309. Board to examine cargo, record, etc.—It shall be the duty of said board, or some one of them, on being notified and requested so to do by any of the parties in interest, Ib., Sec. 8.

to proceed in person to any warehouse, store or dwelling, or in the public streets, or on the wharf, and examine any merchandise, vessels, materials, or other property said to have been damaged on board of any vessel, and inquire and examine and ascertain the cause or causes of such damage, and make a memorandum thereof, and of such property, and record in the books of said office a full and complete statement thereof; and it shall be the duty of said board, when so requested, to furnish a certificate of any record in the books of said office to any party interested therein, upon their paying to said board the regular fee for said certificate. All certificates issued shall be under the seal of said office, and signed by the president or vice-president and secretary, and said certificate shall be evidence of the existence and contents of the record in any court in this State. In all cases of inquiries, examinations and surveys, relating to vessels and cargoes on board thereof, as specified in this chapter, the said board shall give notice to all persons interested in, or having charge of the subject matter of such inquiry, examination or survey, by advertisement in at least one daily newspaper printed and published in the said port for which they are appointed, of the pendency of such inquiry, examination or survey, and of the time and place of completing the same, and expense whereof shall be added to and paid with the fee for making each inquiry, examination or survey.

Ib. Sec. 4.

1310. Board to attend sales. Auctioneers.—It shall be the duty of said board, or some one of the members thereof, to attend personally all sales of vessels when condemned, vessels, materials, and goods in a damaged state, which shall be sold at public auction in the ports for which they were appointed, by reason of such damage, for the benefit of owners or underwriters, or for account of whom it may concern; and it shall be the duty of auctioneers making such sales, to give due notice thereof to said board before the sale, and all such sales shall be made by auctioneers under the direction and by order of the commissioners, for which service they shall be entitled to receive a commission of one-half of one per cent. on the gross amount of sales thereof, to be paid to said board of commissioners on demand of the auctioneer making such sale; and such property shall be exempt from the payment of auction duties to the State.

Ib. Sec. 4.

1311. Duties of auctioneers. Compensation. — It shall be the duty of the auctioneers to make monthly statements to said board, specifying the total amount of each day's sale made by them under this chapter, which statement shall be

filed in said commissioner's office, and the commissioners, when required by the owner or consignee thereof, shall certify the cause of such damage, the amount of such sales, and the charges on the same, all of which shall be recorded in the books of said office; and the said board of commissioners shall be allowed, for each and every survey held on board of any vessel, on hatches, stowage of cargo or damaged goods, or at any warehouse, store or dwelling, or in the public street, or on the wharf within the limits of the ports for which they are appointed, on goods said to be damaged, the sum of ten dollars; and for each and every certificate given in consequence thereof, the sum of two dollars; and for each and every survey on the hull, sails, spars or rigging of any vessel damaged, or arriving at said port in distress, the sum of five dollars; and for each and every certificate given in consequence thereof, the sum of two dollars and fifty cents; and for each valuation on measurement of any vessel, the sum of ten dollars; and the compensation and emoluments of said office shall be divided equally among the said five commissioners composing the board.

1312. Board to receive percentage on pilotage. — The said board of commissioners shall receive, annually, from each pilot one per cent. on the gross amount of pilotage earned by said pilot during each year, to be paid by each pilot at such times and in such manner as the said board of commissioners shall prescribe, and this one per cent. of pilotage shall be in lieu of all other fees and compensation now paid to said board of commissioners by any pilot into any port into which come annually one hundred vessels of five hundred tons burden and upwards. Ib., Sec. 5.

1313. Board to keep accounts.—The said board of commissioners shall keep a full and accurate account of all their receipts and expenditures, and transmit to the Comptroller a true copy thereof annually, on the first Monday in January of each year, and which copy shall be verified by the oaths of the president and secretary of said boards; and each commissioner shall append to such account an affidavit that he has not taken or received any moneys or goods as presents, directly or indirectly, for services as commissioner, except the legal fees. Ch. 4046, Acts 1891, Sec. 7.

CHAPTER XXVII.

REGULATE THE KIND AND SIZE OF BOATS TO BE USED BY THE BAR PILOTS.

Ch. 5224, Acts 1903, Sec. 1.

1314. Steam pilot boats.—The bar pilots for those ports of this State from which there cleared, during the year ending December 31st, 1902, or from which shall clear in any year hereafter beginning January 1st, and ending December 31st, for foreign ports, not less than one hundred and fifty steam vessels, which loaded with their entire cargo in the ports from which they cleared, shall be required to carry on their business as such pilots in steam vessels of not less than fifty tons burden.

Ib., Sec. 2.

1315. Other pilot boats.—The bar pilots of all other ports of this State shall carry on their business as such pilots in steam or sail vessels of such tonnage or sizes as the board of pilot commissioners for such ports respectively may deem suitable for such business, and shall license therefor.

Ib., Sec. 3.

1316. Register with pilot commissioners.—Before any pilot boat shall be used in the business of piloting, her tonnage and class, and the name of the managing owner thereof, shall be registered with the board of pilot commissioners of the port where she is to engage in such business, in a book to be kept for that purpose; and, on such registration, she shall be numbered and by such number licensed for the business of piloting on the bar of such port. And the board of pilot commissioners shall be entitled to a fee of ten dollars for every vessel so registered.

Ib., Sec. 5.

1317. License surrendered in certain cases.—Whenever a vessel so registered and licensed shall cease to be employed in the business of piloting for the port where she is registered, her managing owner shall within ten days thereafter notify the pilot commissioners of such port and surrender to them her license, and she shall not thereafter be used as a pilot boat for such port, unless re-registered and licensed.

CHAPTER XXVIII.

PILOTS MAY INCORPORATE THEMSELVES.

Ch. 5227, Acts 1903, Sec. 1.

1318. Pilots may incorporate themselves.—Any three (3) or more full branch bar pilots for any port of this State

may incorporate themselves in the manner, and with the rights and liabilities hereinafter prescribed.

1319. Incorporation provisions.—All the provisions of the laws of Florida relating to the incorporation of any other corporation shall be followed in the procurement of letters patent for such corporations. Ib., Sec. 2.

1320. By-Laws. Stockholders to be pilots.—The said stockholders of such corporation shall have the power to provide, by by-laws, or by means of an agreement made preliminary to their application for a charter, that the stockholders shall consist only of pilots duly licensed to be such in and for the port of which they are incorporated; that each stockholder shall, except as provided by by-laws, devote his time and skill to the corporation, and not enter into competition therewith under penalties to be fixed by the corporation; that the fees and earnings accruing to each stockholder as a pilot shall belong to, and be collected by the corporation; that the shares of stock shall not be transferable except to the corporation, or to a duly licensed pilot of the port, with the consent of the corporation; that upon the death of any stockholder, his stock shall belong to the corporation at such price and on such terms as may be provided in the by-laws; that when any stockholder shall cease to be an active pilot of the port for which he is licensed, his share of stock shall draw only two-thirds of the dividends of earnings drawn by the shares held by stockholders who are active pilots of the port; that any stockholder who has not become a retired pilot, but who does not engage actively in piloting for the port, but shall perform other services for the corporation, shall receive earnings or dividends upon his share of stock in pursuance of such agreement as may be made between him and the corporation at the time his stock is issued to him, or at any time thereafter; that no stockholder shall mortgage, hypothecate or pledge his stock without the consent of the corporation. Ib., Sec. 3.

1321. Corporation not responsible for loss in certain cases.—All the rights, powers and liabilities conferred or imposed by the laws of Florida relating to corporations for profit, shall apply to corporations organized under this chapter, except so far as inconsistent with the terms hereof or with the by-laws made in pursuance of the authority conferred by this chapter. The corporation, however, shall not be responsible for any loss or damage accruing by any vessel through the negligence of any stock holding pilot, but such stockholder shall be individually liable to the same extent as if he were not a stockholder. Ib., Sec. 4.

CHAPTER XXIX.

OF HARBOR MASTERS.

ARTICLE 1.—Of harbor masters for ports general. Sections.....1322-1326
2.—Of harbor masters for certain ports specified. Sections1327-1336

ARTICLE 1.

OF HARBOR MASTERS FOR PORTS GENERAL.

Ch. 3806, Acts 1881, Secs. 1 and 4; Ch. 5223, Acts 1903, Sec. 1.

1322. (953.) Appointment and removal of harbor masters.—The Governor shall appoint, by and with the consent of the Senate, all harbor masters required for the several ports of this State. They shall hold their offices for the term of two years, unless sooner removed. The Governor may make such appointment or fill any vacancy in such office, between the sessions of the Legislature, by appointment ad interim. Such harbor masters shall be ex-officio members of the board of port wardens and pilot commissioners for their respective ports. Any harbor master may be removed for neglect or breach of duty.

Ch. 3602, Acts 1885.

1323. (954.) Bond.—Every harbor master appointed for any port shall give an approved bond in the sum of five hundred dollars, payable to the Governor of the State, for the faithful performance of his duty, such bond to be approved by the county commissioners of the county in which the port is situated, and by the Comptroller, and to be filed with the Secretary of State.

Ibid.

1324. (955.) Deputies.—Each harbor master may appoint as many deputies as he shall require for the needs of his port, such deputies to be paid by such harbor master.

Ch. 5223, Acts 1903, Sec. 2.

1325. (956.) Duties and fees.—It shall be the duty of every master of any vessel arriving at the ports in this State to report to the harbor master for a station, or for a berth at the wharves, and the harbor master shall regulate and station or assign berths at the wharves to said vessel; and it shall be the duty of the harbor master to remove or cause to be removed, from time to time, all vessels not employed in receiving and discharging their cargoes to make room for such others as require to be more immediately accommodated for the purpose of receiving and discharging their cargoes, and to facilitate their dispatch. It shall be the duty of said harbor masters to be present at all times, either in person or by deputy, to facilitate by stationing or assigning berths at the wharves to vessels arriving at the

port, and to facilitate them in discharging and receiving their cargoes and to prevent confusion and delay. And the said harbor masters shall have full and absolute power to determine how far and in what instance it is the duty of masters, and others having charge of vessels, to accommodate each other in their respective situations.

1326. Compensation.—Harbor masters respectively shall receive from the master, owner or consignee of vessels coming into the port for which he is appointed as aforesaid for the services rendered by himself or his deputy, under the provisions of this section, not exceeding the sum of twenty dollars for each vessel, according to the amount and value of the services rendered. Ibid.

(For penalty for obstructing or resisting harbor master, see Section 3741.)

ARTICLE 2.

OF HARBOR MASTERS FOR CERTAIN SPECIFIED PORTS.

1327. (957.) Appointment.—The Governor shall appoint, by and with the advice and consent of the Senate, one harbor master for each port in the State of Florida into which have come during the past five years, vessels of five hundred tons burden and upwards, at the average rate of not less than two hundred and fifty vessels per year, according to the records of the United States custom house at or nearest the port for which such appointment shall be made. Ch. 3752, Acts 1887, Sec. 1.

1328. (958.) Bond.—Each harbor master so appointed shall enter into a bond in the penal sum of two thousand dollars, with two or more sureties, payable to the Governor of the State of Florida and his successors in office, conditioned for the faithful discharge of the duties of his office, by himself and his deputies, and for the payment of any damage any person may sustain in consequence of any wrongful act of such officer or his deputy under color of his office; such bond to be approved by the county commissioners of the county in which is situated said port and by the Comptroller, and to be filed with the Secretary of State. Ib., Sec. 2.

1329. (959.) To be ex-officio member of pilot commissioners, and observe rules.—Such harbor master shall be ex-officio a member of the board of port wardens and pilot commissioners of the port for which he is appointed, and Ib., Sec. 3.

shall act in obedience to the rules of such boards in all matters within their jurisdiction, with reference to which they may establish rules.

Ib., Sec. 4.

1330. (960.) Deputies.—Any harbor master so appointed may appoint deputies to assist him in the performance of his duties, he paying them for their services and being responsible for their acts.

Ib., Sec. 5.

1331. (961.) Duties as to boarding vessels, etc.—It shall be the duty of such officer, by himself or deputy, to board every vessel entering the port for which he is appointed, after such vessel has been released by the health authorities of the port, to demand of the master the certificate of the vessel's release by such health authorities and to deliver the same within twenty-four hours to the secretary of the board of health. But it shall be unlawful for any such officer, in boarding such vessels under this article, to solicit from such vessel any business either for himself or any one else, and any violation of this provision by any such officer shall subject him to removal from his said office by the Governor, if such violation be committed by the harbor master, and if committed by any deputy harbor master, then by the harbor master, whose duty it shall be in such cases to remove promptly such deputy.

Ib., Sec. 6.

1332. (962.) Stationing vessels.—It shall be the duty of the master of every vessel arriving in a port for which a harbor master shall be appointed, under the provisions of this article, to apply to such harbor master or one of his deputies, for a station in the stream, or a berth at the wharves, and the harbor master or his deputy shall forthwith station such vessel in the stream or at the wharves, as the case may be, so as to best facilitate the loading or discharge of such vessel, and at the same time interfere as little as possible with other vessels in the vicinity; but in stationing vessels at wharves or assigning them berths thereat, he shall conform in every instance to the wishes of the managers of such wharves as to their location at the same.

Ib., Sec. 7.

1333. (963.) Duties as to the loading or unloading of vessels.—It shall be the duty of the harbor master appointed under the provisions of this article to be present at all times, either in person or by deputy, to facilitate the loading or unloading of vessels by assigning to them berths at the wharves, and by requiring each to accommodate others needing more immediate accommodation, in accordance with the provisions of the last preceding section.

1334. (965.) Fees.—Such harbor master shall receive from the master, owner or consignee of vessels coming into the port for which he is appointed, as aforesaid, for the services rendered by himself or deputy, under the provisions of this article, not exceeding the sum of twenty dollars, according to the amount and value of the services rendered. Ib., Sec. 9.

1335. (966.) Change of station.—Should any vessel, after having been stationed by such harbor master, require a change of station, application shall be made by the manager of such wharf to such officer, and it shall be his duty to make such change, for which he shall receive no compensation, unless the vessel requiring such change requires to be removed to another wharf or out into the stream. Ibid.

1336. (967.) Recovery of double amount.—Whenever any fee or compensation due the harbor master under the provisions of this article is not paid within forty-eight hours from the rendition of the services for which the same is due such officer may then demand the same from the master or his consignee, and upon refusal of payment may sue for and recover from the person or persons owing the same double the amount which has been so demanded. Ib., Sec. 10.

SECOND DIVISION.

OF CIVIL COURTS—THEIR ORGANIZATION, AND PROCEEDINGS THEREIN. (BUT CONTAINING PROVISIONS AFFECTING INCIDENTALLY SOME CRIMINAL MATTERS.)

TITLE I.

OF PROVISIONS APPLICABLE TO MORE THAN ONE COURT.

CHAPTER 1.—Of disqualification, resignation, death and removal of judges. Sections.....1337-1342
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CHAPTER I.

OF DISQUALIFICATIONS, RESIGNATIONS, DEATH AND REMOVAL OF JUDGES.

ARTICLE 1.—Disqualification of judges. Sections 1337-1340
2.—Resignation, death and removal of judges. Sections....1341-1342

ARTICLE 1.

DISQUALIFICATION OF JUDGES.

Ch. 1327, Acts 1862, Sec. 1, as amended by Ch. 5398, Acts 1905.

1337. (967.) What are disqualifications. — No judge of any court shall sit or preside in any cause to which he is a party, or in which he, or any person related to him by consanguinity or affinity within the ninth degree, is a party, or is interested in the result thereof; nor shall any judge sit or preside in any cause wherein his father or son is attorney for either party to such cause; nor shall such judge entertain any motion or make any order therein other than to have the same tried by a qualified tribunal: Provided, That no justice of the peace or county judge when exercising the jurisdiction of justice of the peace shall be disqualified because a father or son is the attorney-at-law for either party in such cause.

Can party waive disqualification of judge?—Ochus v. Sheldon, 12 Fla. 138.

Decision of judge as to his disqualification not reviewable by mandamus.—State v. Van Ness, 15 Fla., 317.

No affinity between husband's brothers and wife's brother when the latter is judge.—Ex parte Harris, 26 Fla., 77, 7 So. Rep. 1.

A judge who previous to his commission has acted as counsel for one of the parties in the matter is disqualified.—State ex rel v. Hocker, 34 Fla., 35. 15 So. Rep. 581.

Tampa St. Ry. & Power Co. v. Tampa Suburban P. Co. 30 Fla., 595. 11 So. Rep. 562.

Character of interest disqualifying.—Sauls v. Freeman, 24 Fla., 209. 4 So. Rep. 525.

An order of a judge of one circuit on account of disqualification transferring the cause to another circuit should state the cause of such disqualification.—Roberts v. State, 27 Fla., 244. 9 So. Rep. 246.

The fact that a judge signed a petition for a change of county site does not disqualify him to sit in mandamus proceedings in such matter.—Sauls v. Freeman, 24 Fla., 209. 4 So. Rep. 525.

A circuit judge who is vestryman of an incorporated church is disqualified in a cause in which the rector, wardens and vestry of the church are interested.—State v. Young, 31 Fla., 594. 12 So. Rep. 673.

Disqualified by being a tax-payer on real property subject to special subdistrict school tax.—State v. Call, 41 Fla., 442. 26 So. Rep. 1014.

Disqualified where the husband of his wife's niece is an interested party. State v. Wall, 41 Fla., 463. 26 So. Rep. 1020. A judge of a criminal court of

record is not disqualified by reason of bias or prejudice against a defendant. Bryan v. State, 41 Fla., 643. 36 So. Rep. 1042.

1338. (968.) What are not disqualifications.—No judge shall be disqualified from sitting in the trial of any suit in which any county or municipal corporation is a party, by reason that such judge is a resident or tax-payer within such county or municipal corporation. Ch. 1817, Acts 1870, Sec. 1.

No application where judge is a tax-payer in a special school sub-district.—State v. Call, 41 Fla., 442. 26 So. Rep. 1014.

1339. (969.) Retirement of disqualified judge.—The judge so disqualified shall retire of his own motion, and without waiting for an application to that effect. Ch. 1327, Acts 1862, Sec. 2.

1340. (970.) Effect of his action. — Any and all judgments, decrees and orders heretofore or hereafter rendered in causes where the disqualifications appear of record in the cause, shall be void, but where the disqualification does not so appear, they shall not be subject to collateral attack. Ib., amended by Ch. 4902, Acts 1901.

(Judges forbidden to form certain partnerships: See Sec. 1351, post.)

A circuit judge cannot practice his profession as an attorney-at-law. Perry v. Bush, 46 Fla., 242. 35 So. Rep. 275.

ARTICLE 2.

RESIGNATION, DEATH OR REMOVAL OF JUDGES.

1341. (971.) Disposition of matters pending.—Upon the resignation, death or impeachment of any judge, all matters pending before him shall be heard and determined by his successor, and parties making any motion before such judge shall suffer no detriment by reason of his resignation, death or impeachment. Ch. 3007, Acts 1877, Sec. 1.

It is proper for the successor of the judge who presided at the trial to settle and sign bill of exceptions.—Hays v. McNealy, 16 Fla., 406; Sams v. King, 18 Fla., 552.

1342. (972.) Disposition of papers in matters pending. All judges, other than justices of the peace, when they resign or are convicted on impeachment, shall file all papers pending before them with the clerk of the court in which the cause is pending; and the executor or administrator of any Ib., Sec. 2.

judge who dies pending any matter before him, shall file all papers found among the papers of his intestate or testator with the persons mentioned.

CHAPTER II.

POWERS OF JUDGES IN VACATION.

Ch. 3121, Acts 1879, Sec. 1.

1343. (973.) Powers of judges in vacation.—The judges of the several courts are hereby authorized and empowered to exercise in vacation any jurisdiction or power they are now authorized and empowered to exercise in term time; but when the exercise of such power shall require the intervention of a jury it shall not be exercised except in cases specially provided, unless all parties agree in writing to waive a jury.

This section shall not be construed to require any judge to go out of the county in which he may be during vacation.

Mandamus is the proper remedy against a judge who has jurisdiction, but refuses to exercise it.—State ex rel. Sanchez v. Call, Judge, 36 Fla., 305. 18 So. Rep. 771; State ex rel. Turner v. Hocker, Judge, 36 Fla., 358. 18 So. Rep. 767. Circuit judge can not in vacation make an order extending time to present bill of exceptions.—Myrick v. Merritt, 21 Fla., 799.

CHAPTER III.

JUDGES AD LITEM.

Ch. 3713, Acts 1887. Sec. 1.

1344. (974.) In circuit and county courts.—When, from any cause, the judge of a circuit or county court is disqualified from presiding in any civil case, the parties may agree upon an attorney-at-law, which agreement shall be entered upon the record of said cause, who shall be judge ad litem, and shall preside over the trial of, and make orders in said case, as if he were the judge of the court.

Nothing in this section shall prevent the parties from transferring the cause to another circuit or county court, as the case may be, or they may have the case submitted to a referee.

This transfer can be had only by consent of all the parties to the cause. State ex rel v. Walker, 25 Fla., 561. 6 So. Rep. 169.

CHAPTER IV.

CONTEMPTS OF COURT.

1345. (975.) Power to punish.—Every court shall have power to punish contempts against it, but the punishment imposed by a justice of the peace shall not exceed twenty dollars' fine or twenty-four hours' imprisonment. Nov. 23, 1828, Sec. 1.

1346. (976.) Contempts defined.—A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly. But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt. Ib., Sec. 2.

Punishment for contempt not reviewable on appeal.—Caro v. Maxwell, 20 Fla., 17; Watson v. Jones, 41 Fla., 188. 25 So. Rep. 678.

As to notice in contempt proceedings, see Palmer v. Palmer, 28 Fla., 295. 9 So. Rep. 657.

Demurrer does not lie to a rule for contempt, but a motion to quash.—Continental Building and Loan Association v. Scott, 40 Fla., 386. 24 So. Rep. 473.

Supreme Court will on habeas corpus review action of lower court sufficiently to determine whether the alleged conduct constitutes a contempt.—Ex Parte Ed Senior, 37 Fla., 1. 19 So. Rep. 652.

Contempt, definition.—State v. Johnson, 13 Fla., 33. Powers of courts of chancery.—Ex Parte Edwards, 11 Fla., 174.

CHAPTER V.

ATTORNEYS-AT-LAW.

1347. (977.) Any one may be his own attorney.—Any person may manage his own cause in any of the courts of this State. Nov. 10, 1828, Sec. 6.

1348. (978.) Who may be attorneys for others.—Neither marshals, sheriffs, clerks of court and their deputies, nor any person convicted of an infamous crime shall practice law in any court in this State; nor shall any person so practice unless he shall have procured a license so to do from a judge of a circuit court of this State under his hand (and the seal of a circuit court in his circuit), or shall Ib., Sec. 1.

have been admitted to practice in one of the circuit courts of the United States, or in a supreme court of one of the United States. The license (or certificate of his admission to practice in a United State circuit court or supreme court of another State) shall be entered upon the minutes of the court in which the attorney wishes to practice, and the original shall be returned to him.

Ib., Secs. 3 and 4 as amended by Ch. 4745, Acts of 1899.

1349. (979.) How a license is obtainable.—Before any person shall obtain a license to practice law he shall:

First. Satisfy, by satisfactory evidence, the judge of the circuit court to whom he may make application that he is twenty-one years of age, and of good moral character; and

Second. Shall upon examination by the judge and by at least two members of the bar, to be selected by the judge, demonstrate his possession of the qualifications so to practice; and such examination shall be in open court at some regular or special term of the court.

Third. He shall take an oath before the clerk of the circuit court to support the Constitution of the State of Florida, and the United States, and honestly to demean himself in his profession and exercise the duties thereof to the best of his skill and ability.

Fourth. The judge and members of the bar making such examination shall, if they find the applicant qualified to practice, make and sign a certificate setting forth the fact of his possession of such qualifications and that he is licensed to practice in the several circuit and inferior courts of the State; and the same shall thereupon be recorded upon the minutes of the court and shall then be delivered to the applicant as his license to practice in the said courts of the State. The clerk shall receive the usual fee for recording such certificate, the same to be paid by the applicant.

A minor male whose disabilities have been removed, as provided by statute, is eligible to admission.—State v. Baker, 25 Fla., 598. 6 So. Rep. 445.

Sec. 1, Ch. 5009, Acts of 1901.

1350. Graduates of Stetson University. — Any person graduating from the Law Department of the John B. Stetson University, after taking the full prescribed course in said law department of not less than two years, shall be admitted to the practice of law in all the courts of this State without examination as to his legal attainments, upon motion, and upon the production of his diploma duly issued by the board of trustees of said university, and upon his presenting to the court satisfactory evidence that he is

twenty-one years of age and of good moral character, and upon taking the oath prescribed by law in that behalf.

1351. What partnership prohibited.—Judges of any courts in this State, who are permitted to practice law in this State, and prosecuting attorneys before the same courts, are hereby prohibited from forming partnerships with each other or becoming or being partners with each other in the practice of law, in any wise, or before any court. Sec. 1, Ch. 4901, Acts of 1901.

1352. Cannot practice.—Any attorney-at-law, not being a prosecuting attorney, but who may be a partner in the practice of law of any judge of any State or municipal court permitted to practice law, shall not be allowed to practice law before the court of which his partner is judge. Sec. 2, Ib.

1353. Attorney to administer oaths.—Attorneys-at-law practicing in the several courts of this State are hereby authorized to administer oaths in open court and in the presence of the presiding judge or justice thereof. Sec. 1, Ch. 4149, Acts of 1893.

1354. Penalty.—Any person taking an oath so administered and swearing falsely, shall be liable to all the pains and penalties prescribed for perjury. Sec. 2. Ib.

1355. Shall not become sureties on certain bonds.—No attorney-at-law shall be qualified to become the surety on the official bond of any State, county or city official in this State. Nor can attorneys become surety on the bonds of their clients in judicial proceedings. Sec. 1, Ch. 4900, Acts of 1901.

Attorneys cannot sign bonds for clients.—Gordon v. Camp, 2 Fla., 23; Love v. Sheffelin, 7 Fla., 40.

1356. Attorney's fees in garnishment cases.—Whenever any writ of garnishment is sued out in any of the courts of justices of the peace, or county courts, in this State, and the same shall be dismissed, or the plaintiff shall fail to sustain his claim, the defendant or defendants in garnishment shall be entitled to receive from the plaintiff an attorney's fee of ten dollars, which shall be taxed by the court as cost, and collected as provided for other costs in the suit. Sec. 1, Ch. 4030, Acts of 1891.

1357. No appeal until fees are paid.—If said writ be dismissed, or the plaintiff shall fail to sustain his claim, then no appeal from the order or judgment of said court shall be permitted until the attorney's fee, as herein provided, shall have been paid into court. Sec. 2, Ib.

(Attorney fee in insurance cases: See Sec. 2774.)

(Attorney's fees in foreclosure of mechanics' and other liens: See Sec. 2218.)

Stipulations for attorney's fees do not avoid a contract.—Logan v. Slade & Etheredge, 28 Fla., 699. 10 So. Rep. 25.

Sec. 1, Ch. 4379, Acts of 1895.

1358. Duty of judge in disbarment proceedings.—Whenever it shall be made known to any judge of the circuit court that any attorney-at-law, practicing in any of the courts in his judicial circuit, has been guilty of dishonest conduct, or habits of general immorality, or any such single act of crime or vice as may show him to be unfit for the trusts and confidence reposed in him as an attorney, or of deceit or misconduct in his office of attorney, or of suppressing or attempting to suppress any testimony in any case, or of tampering with any record, or of stirring up litigation, or being drunk while the case under his charge is being considered in court, or any unprofessional acts which unfit him for association with the fair and honorable members of the profession, it shall be the duty of such judge to direct the State's attorney for the circuit to make in writing a motion, in the name of the State, to disbar such attorney, setting forth in the motion the particular acts or conduct for which the attorney is sought to be disbarred.

Sec. 2, Ib.

1359. Copy served upon accused.—Upon the filing of such motion a copy thereof shall be served upon the accused attorney, and he shall within three days after the service thereof file his answer thereto under oath or be held to have confessed the same. The time for answering may be enlarged by the judge for sufficient reasons. The accused may at the time of filing his answer demur to the motion upon the ground that the acts or conduct set forth in the motion do not furnish sufficient ground for disbarring him. In case the demurrer is sustained the motion shall be denied.

Sec. 3, Ib.

1360. The hearing.—Upon the filing of the answer denying the acts or conduct alleged in the motion the court shall hear the evidence and if, in the judgment of the court, the allegations in the motion are sustained by a preponderance of the evidence the motion shall be granted and judgment rendered suspending or disbarring the attorney.

Sec. 4, Ib.

1361. Writ of error.—Either party may take a bill of exceptions and prosecute a writ of error to the Supreme Court of the State of Florida as in other civil cases: Provided, That no writ of error shall operate as a supersedeas.

Sec. 5, Ib.

1362. Duty of Attorney-General.—In case a writ of error is sued out it shall be the duty of the Attorney-General to represent the State in the Supreme Court.

1363. Precedence of proceedings.—Writs of error sued out under the provisions of this act shall take precedence of all other civil causes in the Supreme Court. Sec. 6, Ib.

Disbarment of attorneys; pleading and practice and evidence in.—State v. Maxwell, 19 Fla., 31; State v. Finlay, 30 Fla., 325. 11 So. Rep. 674; State v. Young, 30 Fla., 85. 11 So. Rep. 514; State v. Finlay, 30 Fla., 302. 11 So. Rep. 500.

1364. Refusal to pay over collections.—If any attorney shall collect money for his employers and refuse to pay it over on demand, he shall be stricken from the list of attorneys, and shall not be allowed to practice within this State until he shall pay over the money to his client or legal representative, and he shall also be liable to a suit for the same, and subject to a penalty of ten per cent. for every month he shall detain the same after a demand regularly made. Sec. 980, Rev. Stat. 1892.

(Depositions in disbarment proceedings: See Ch. 5402, Appendix.)

CHAPTER VI.

OF PARTIES TO SUITS AT LAW.

ARTICLE 1.—By whom suit may be brought. Sections.....1365-1369
2.—Non-joinder and misjoinder of plaintiffs. Sections....1370-1371
3.—Non-joinder and misjoinder of defendants. Sections..1372-1374
4.—Abatement and change of parties by death. Sections..1375-1381
5.—Abatement by marriage. Section..... 1382

ARTICLE 1.

BY WHOM SUIT MAY BE BROUGHT.

1365. (981.) Real parties in interest.—Any civil action at law may be maintained in the name of the real party in interest. This shall not be deemed to authorize the assignment of a thing in action not arising out of contract. An executor, administrator, trustee of an express trust (including a person with whom or in whose name a contract is made for the benefit of another, or when expressly author- Ch. 3241, Acts 1881, Sec. 1.

ized by statute), may sue without joining with him the person for whose benefit the action is prosecuted.

By amendment the nominal plaintiff may be stricken out and the case may proceed in the name of the use plaintiff.

Hamburg v. Liverpool & L. & G. Ins. Co., 42 Fla., 86. 27 So. Rep. 872.

A mere agent of the owner of land can not sue in his own name.—King v. Gwyn, 14 Fla., 32; Allen v. same, Ib. 39.

As to right of assignee of cause of action to sue.—Kendig v. Giles, 9 Fla., 278; Wynn v. Ely, 8 Fla., 232.

As to suit by judgment creditor for use of assignee.—Sammis v. Wightman, 31 Fla., 10. 12 So. Rep. 536.

A convict imprisoned for life may sue.—Willingham v. King. 23 Fla., 478. 2 So. Rep. 851.

Assignee of insolvent is "trustee of express trust."—Robinson v. Nix, 22 Fla., 321; Smith v. Gifford, 36 Fla., 481. 18 So. Rep. 917.

1366. (982.) Infants, lunatics, etc.—An infant may sue by his next friend, and in all cases whatsoever, and idiots and lunatics by their guardians.

Nov. 23, 1828, Sec. 32.

Before any suit can be brought by the next friend, it shall be his duty to file bond and security with the court, conditioned to appropriate the amount which may be recovered in said suit (after the expenses of recovering the same are paid), to the use and benefit of said infant.

Omission to give bond not assignable as error by defendant.—Neal v. Spooner, 20 Fla., 38. Bond required only in common law proceedings.—Pace v. Pace, 19 Fla., 438, over-ruling Sanderson v. Sanderson, 17 Fla., 820.

1367. (1197.) Married women.—A married woman may interpose a claim to her personal property levied upon under legal process, and may prosecute an action concerning her land and rights therein, with all the rights, powers and privileges of a feme sole.

Feb. 17, 1833, Sec. 9, and March 15, 1844, Sec. 1.

1368. Deserted wife, etc.—A married woman whose husband has become insane or has deserted her for six months may prosecute or defend any action at law or in equity as if she were a feme sole.

1369. (983.) By sureties against each other, etc.—When any person shall execute any bond, note, draft, or bill of exchange in this State, and any two or more persons shall also execute the same jointly with him, and merely as his sureties, or shall endorse any note or draft or bill of exchange, as sureties for the maker or drawer thereof, and for his accommodation, and without any consideration, said persons shall be bound each to the other for a proportional contribution of the amount of said bond, note, draft or bill of exchange; and if any one or more of said persons be compelled

Sec. 983, Rev. Stat. 1892.

to pay any part of said bond, note, draft or bill of exchange, he or they shall have his or their remedy by suit against his or their co-surety or co-sureties for contribution, and may sue separately or jointly to enforce the payment of the same; and the defendants, if more than one, may be sued separately or jointly, and where it may be necessary, the person claiming such contribution may proceed by attachment as in other cases.

ARTICLE 2.

NON-JOINDER AND MISJOINDER OF PLAINTIFFS AND REMEDIES THEREFOR.

1370. (984.) Remedy before trial for non-joinder and misjoinder of plaintiffs.—It shall be the duty of the court, at any time before the trial of any cause, to order that any person not joined as plaintiff in such cause shall be so joined; or that any person originally joined as plaintiff shall be struck out from such cause, if it shall appear to such court or judge that injustice will not be done by such amendment, and that the person to be added as aforesaid consents, either in person or by writing or by attorney, to be so joined, or that the person to be struck out as aforesaid consents, in manner aforesaid, to be struck out; and such amendment shall be made upon such terms as to the amendment of the pleadings (if any), postponement of the trial and otherwise as the court by which such amendment is made shall think proper; and when any such amendment shall have been made, the liability of any person who shall have been so added as co-plaintiff shall, subject to any terms imposed as aforesaid, be the same as if such person had been originally joined in such cause. If before plea the defendant shall give notice to the plaintiff in writing that he objects to a non-joinder or misjoinder of any person, specifying the name of the person not joined or misjoined, or shall file a plea in abatement of non-joinder or misjoinder, in cases where such plea in abatement may be pleaded by the defendant, the plaintiff shall be at liberty, without any order, to amend the writ and other proceedings before plea by striking out or adding the name of the person named in such notice or plea in abatement, and to proceed in the action without any further appearance, on payment of the cost of, and occa-

Ch. 1096, Acts of 1861, Secs. 5 and 7.

sioned by, such amendment only, and in such case the defendant shall be at liberty to plead de novo.

A failure to join necessary parties is a demurrable defect.—Jacksonville v. Aetna, etc., Co., 20 Fla., 100; Chamberlin v. Lester, 39 Fla., 452, 22 So. Rep. 736.

Ib., Sec. 6.

1371. (985.) Remedy at the trial for non-joinder or misjoinder of a plaintiff.—In case it shall appear at the trial of any action that there has been a misjoinder of plaintiffs, or that some person not joined as plaintiff ought to have been so joined, and the defendant shall not, at or before the time of pleading, have given notice in writing, as provided in the preceding section, that he objects to such non-joinder or misjoinder, such non-joinder or misjoinder may be amended at the trial by the court, if it shall appear to such court or judge that such non-joinder or misjoinder was not for the purpose of obtaining an undue advantage, and that justice will be done by such amendment, and that the person to be added as aforesaid consents, either in person or by attorney, to be so joined, or that the person to be struck out as aforesaid was originally introduced without his consent, or that such person consents, in manner aforesaid, to be so struck out; and such amendment shall be made upon such terms as the court or judge by whom such amendment is made shall think proper; and when any amendment shall have been made, the liability of any person who shall have been added as co-plaintiff shall, subject to any terms imposed as aforesaid, be the same as if such person had been originally joined in such action.

ARTICLE 3.

NON-JOINDER AND MISJOINDER OF DEFENDANTS AND REMEDIES THEREFOR.

Ib., Sec. 8.

1372. (986.) Remedy at and before trial for misjoinder of a defendant.—It shall be the duty of the court, in case of the joinder of too many defendants in any action, at any time before the trial of such cause, to order the name of the misjoined defendant to be struck out, if it shall appear to such court that injustice will not be done by such amendment, and the amendment shall be made upon such terms as the court by whom the amendment is made shall think proper; and in case it shall appear at the trial of any action that there has been a misjoinder of any defendants, such mis-

joinder may be amended at the trial in like manner as the misjoinder of plaintiffs has been heretofore directed to be amended, and upon such terms as the court by whom such amendment is made shall think proper.

1373. (987.) Remedy after plea in abatement.—Where the non-joinder of any person as a co-defendant has been pleaded in abatement, the plaintiff shall be at liberty, without any order, to amend the writ of summons and the declaration by adding the name of the person named in such plea in abatement, and to proceed against the original defendant and the person so named in such plea in abatement. Ib., Sec. 9.

The date of such amendment shall, as between the person so named in such plea in abatement and the plaintiff, be considered for all persons as the commencement of the action.

An administrator of a deceased obligor on a bond can not be jointly sued with the surviving obligors.—City of Orlando v. Gooding, 34 Fla., 244. 16 So. Rep. 770..

An objection for non-joinder of a defendant can not be raised for the first time in an appellate court.—Taylor v. Brown, 32 Fla., 334. 13 So. Rep. 957.

Maker and endorser of a promissory note can not be sued jointly.—Webster v. Barnett, 17 Fla., 252.

Parties to suits to set aside fraudulent conveyances.—Howse v. Moody, 14 Fla., 59.

1374. (988.) Effect of amendment after plea in abatement for non-joinder of a defendant.—After such plea in abatement, and amendment, if it shall appear upon the trial of the action that the person so named in such plea in abatement was jointly liable with the original defendant, the original defendant shall be entitled to the costs of such plea in abatement; but if at the trial it shall appear that the original defendant is liable, but that one or more of the person or persons named in such plea in abatement is or are not liable, the plaintiff shall nevertheless be entitled to judgment against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs against the plaintiff, who shall be allowed the same, together with the cost of the plea in abatement and amendment, as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the non-joinder of such person; but any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement. Ib., Sec. 10.

Non-joinder of defendant cannot be taken advantage of as variance at trial.—Harley's extr. v. Roche, 6 Fla., 746.

ARTICLE 4.

ABATEMENT AND CHANGE OF PARTIES BY DEATH.

1375. (989.) Suits for personal injuries.—All actions for personal injuries shall die with the person, to-wit: Assault and battery, slander, false imprisonment, and malicious prosecution; all other actions shall and may be maintained in the name of the representatives of the deceased.

Nov. 23, 1828, Sec. 30.

Applied to suit for libel.—Jones v. Townsend, 23 Fla., 355. 2 So. Rep. 612. And to injury to railroad passenger.—Jacksonville Street Railway Co., v. Chappell, 22 Fla., 616.

1376. (990.) Death of a sole plaintiff.—In case of the death of a sole plaintiff, where the action survives, the legal representative of such plaintiff may, by leave of the court or a judge, file in the cause a suggestion that the plaintiff is dead, and that he is legal representative, and the action shall thereupon proceed in his name. If such suggestion is made before trial, the truth of the suggestion, if denied by the defendant, shall be tried thereat, together with the right of the deceased plaintiff, and such judgment shall follow upon the verdict in favor of or against such person making such suggestion, as if such person were originally the plaintiff.

Ch. 1096 Acts 1861, Sec. 43.

1377. (991.) Death of a sole defendant.—In case of the death of a sole defendant or sole surviving defendant where the action survives, the plaintiff may file in the cause a suggestion that the defendant is dead, and that a person named therein is executor or administrator of the deceased, and may thereupon serve such executor or administrator of the deceased with a copy of the suggestion, and with a notice requiring such executor or administrator to appear, and that in default of his so doing, the plaintiff will sign judgment against him as such executor or administrator; and the same proceedings may be had and taken in case of non-appearance after such notice as upon a writ against such executor or administrator in respect of the cause for which the action was brought. The new defendant may be permitted to plead such pleas as the original defendant might have done, and also such pleas as may be appropriate and rendered necessary by his character as executor or administrator, and in case the plaintiff shall recover, he shall be entitled to like judgment as in action originally commenced against the executor or administrator; and when any defendant shall die, and there is no administration on his estate in the county where such suit was pending, but is in some other county,

Ib., Sec. 44.

the notice may be served upon the administrator or executor in such other county. The executor or administrator of such decedent may be made a party upon his suggestion.

1378. (992.) Death of co-complainant or co-defendant.—If there be two or more plaintiffs or defendants and one or more of them should die, if the cause of action shall survive to the surviving plaintiff, or against the surviving defendant, the action shall not thereby be abated; but a suggestion of such death having been filed in the cause, the action shall proceed at the suit of the surviving plaintiff against the surviving defendant. Ib., Sec. 42.

1379. (993.) Death of a co-partner.—A suggestion of the death of any co-partner of a mercantile or other firm during the pendency of any suit, either in favor of or against said firm, may be filed in the cause, and the cause shall proceed in the name of the survivor or survivors. Nov. 23, 1829. Sec. 39.

Applied to a case of tort.—Bucki v. Cone, 25 Fla., 1. 6 So. Rep. 160.

1380. (994.) Death of party after verdict.—The death of either party between the verdict and judgment and the issuing or return of execution shall not be alleged for error. Ch. 1096, Acts of 1861, Sec. 45.

1381. (995.) Death of a party after interlocutory judgment.—If the plaintiff die after an interlocutory judgment, and before final judgment therein, such action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die after such interlocutory judgment, and before final judgment obtained therein, the said action shall not abate, if such action might be originally prosecuted and maintained against the executor or administrator of such defendant; and the plaintiff, or if he be dead, his executor or administrator, may have a writ of sci. fa. against the defendant if living, or if he be dead, then against his executor or administrator, to show cause why damages in such action should not be assessed and recovered by him; and if the defendant, or, if dead, his executor or administrator, shall fail to show cause, judgment final shall be given for the said plaintiff, his executor or administrator, prosecuting such writ against such defendant, his executor or administrator, respectively. Ib., Sec. 46.

Death of defendant before judgment does not render judgment void.—Collins v. Mitchell, 5 Fla., 364. Revivor of suit abated by death can be had only after appointment of representative.—Brett v. Ming, 1 Fla., 447.

ARTICLE 5.

ABATEMENT BY MARRIAGE.

Ib., Sec. 47.

1382. (996.) Marriage of a woman, plaintiff or defendant.—The marriage of a woman, plaintiff or defendant, shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to judgment; and such judgment shall be rendered against or for the wife alone, and the execution thereon be levied upon her property alone. In case of a judgment for the wife, execution may issue thereon by the authority of the husband without suggestion.

ABATEMENT OF SUITS AGAINST COUNTIES.

See Section 773.

CHAPTER VII.

LOCALITY OF ACTIONS.

Nov. 21, 1829, Sec. 7 and Ch. 3721, Acts of 1887, Sec. 1.

1383. (998.) Where suits may be begun.—Suits shall be begun only in the county (or if the suit is in the justice of the peace court in the justice's district) where the defendant resides, or where the cause of action accrued, or where the property in litigation is.

If brought in any county or justice district where the defendant does not reside, the plaintiff, or some person in his behalf, shall make and file with the praecipe or bill in chancery, an affidavit that the suit is brought in good faith, and with no intention to annoy the defendant. This section shall not apply to suits against non-residents.

Applied to an action on the case.—Bucki v. Cone, 25 Fla., 1. 6 So. Rep. 160. Discussed.—Russ v. Mitchell, 11 Fla., 80. Does not apply to alien enemies.—Ib. Relates to cause of action and not to right to sue.—McDougal v. Lea, 2 Fla., 532.

Objection to venue should be made by plea in abatement.—Bucki v. Cone, supra. A general appearance does not waive right of defendant to be sued in county of his residence or where the action accrued.—Curtis v. Howard, 33 Fla., 251. 14 So. Rep. 812.

1384. (999.) Suits against defendants residing in different counties or districts.—Suits against two or more defendants residing in different counties (or justices' districts) may be brought in any county or district in which any defendant resides.

Nov. 23, 1828, Sec. 10.

1385. (1000.) Suits upon several causes of action.—Suits upon several causes of action may be brought in any county (or justice's district) where either of the causes of action arose.

Where causes of action arise in different counties it is sufficient to lay the venue in the county where the action is brought.—Temple v. Florida Land, etc., Co., 23 Fla., 400. 2 So. Rep. 773.

A question of pleading.—Gibbs v. Davis, 27 Fla., 531. 8 So. Rep. 633; Bishop v. Camp, 39 Fla., 517. 22 So. Rep. 735.

Objection that suit is in wrong county too late after verdict.—Edwards v. Union Bank, 1 Fla., 136.

1386. (1001.) Suits against corporations.—Suits against domestic corporations shall be commenced only in the county (or justice's district) where such corporation shall have or usually keep an office for the transaction of its customary business, or where the cause of action accrued, or where the property in litigation is; and in the case of companies incorporated in other states or counties, and doing business in this State, suits shall be commenced in a county or justice's district wherein such company may have an agent or other representative, or where the cause of action accrued, or where the property in litigation is situated.

Ch. 1639, Acts of 1869 Sec. 24, as amended by Ch. 5221, Acts of 1903.

1387. (1002.) Jurisdiction over navigable waters.—Whenever the territorial jurisdiction of any court in any county shall extend to one bank of any navigable water, such court shall have jurisdiction across such navigable water from shore to shore; and if the territorial jurisdiction of different courts, whether of the same county or not, extend to the opposite banks of any navigable water, such courts shall have concurrent jurisdiction across said navigable water from shore to shore.

Venue may be laid in margin of declaration.—Temple v. F. L. I. Co., 23 Fla., 400. 1 So. Rep. 333.

CHAPTER VIII.

CONSOLIDATION OF ACTIONS.

1388. (1003.) Consolidation of actions.—Where there are more persons than one bound on any bond, promissory

Ch. 800, Acts of 1857, Sec. 1.

note or other contract, whether they may be bound as original obligors, sureties, or endorsers, and the plaintiff shall institute more suits than one upon such bond, note or contract, the suits shall be, in the discretion of the court, consolidated in cases where consolidation is practicable and in accordance with the principles of law, and only the costs of one shall be taxed in the bill of costs.

Consolidation consented to cannot afterwards be objected to.—Raulerson v. Rochner's admx., 17 Fla., 809.

CHAPTER IX.

JOINDER OF CAUSES OF ACTION.

Ch. 1096, Acts of 1851, Sec. 12.

1389. (1004.) (1). What causes may be joined.—Causes of action, of whatever kind, by and against the same parties in the same rights, may be joined in the same suit, except that replevin and ejectment shall not be joined together nor with other causes of action.

When two or more causes of action so joined arise in different counties, the venue may be laid in either of such counties, but the court shall have power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such cases such court may order separate records to be made up and separate trials to be had.

Separation of causes in sound discretion of lower court.—Jefferson County v. Hawkins, 23 Fla., 223. 2 So. Rep. 362.

Ib., Sec. 11.

1390. (1005.) (2). Action by man and wife.—In any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, the husband may add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the court shall think fit. In case of the death of either plaintiff, such suit, so far as it relates to the causes of action, if any, which do not survive, shall abate, but to that extent only.

CHAPTER X.

RULE DAYS.

Ch. 1938, Acts of 1873, Secs. 3 and 4, as amended by Ch. 4383, Acts of 1895.

1391. (1006.) Rule days.—The first Mondays of each month are designated as rule days for all trial courts.

Upon its rule days every court shall be deemed to be

open and in session, at the clerk's office, or if the court have no clerk then at the judge's office, for the return of writs and process, for the entry of defaults and judgments by default, and also for the purpose of receiving, entertaining and disposing of all matters, rules, orders and other interlocutory proceedings which parties may make or apply for, and which, by the practice of the court, may be entered of course, or which are granted without the special order of the judge.

CHAPTER XI.

COMMENCEMENT OF SUITS AT LAW.

ARTICLE 1.—How suits are begun. Section..... 1392
2.—Process, form of. Sections.....1393-1398
3.—How returnable. Section..... 1399
4.—When to be served. Section..... 1400
5.—By whom served. Section..... 1401
6.—How served. Sections.....1402-1412
7.—Service on Sunday. Section..... 1413
8.—Return of. Section..... 1414

ARTICLE 1.

HOW SUITS ARE BEGUN.

1392. (1007.) How suits are begun.—A personal suit at law is begun by filing in the court in which the suit is to be commenced a praecipe or memorandum, stating the names of the parties, the nature of the action and the amount of the debt or damages for which the plaintiff sues; which praecipe shall be signed by the plaintiff or his attorney. Upon the filing of such praecipe or memorandum, there shall be issued from such court a summons ad respondendum, which shall be called the original.

Nov. 23, 1828, Sec. 4.

Writ should state individual names of partners.—Richardson v. Smith, 21 Fla., 336. Remedy for variance between writ and copy.—Tidwell v. Witherspoon, 18 Fla., 282. When a common law suit is pending.—Thebaut v. Canova, 11 Fla., 143. Effect of pendency.—Ib. Variance between damages stated in, and in declaration, not ground of error.—McKay v. Friebele, 8 Fla., 21. Summons should state amount claimed, but omission to do so does not avoid it.—Campbell v. Chaffee, 6 Fla., 724. Remedy for defect in, apparent on face and dehors.—Ib. Mistake in date waived by appearance, etc.—Wood v. Bank, 1 Fla., 378.

ARTICLE 2.

PROCESS, FORM OF.

1393. (1008.) Teste and date.—All process shall run in the name of the State of Florida, and shall bear teste in the name of the clerk or judge issuing it, be signed by said clerk or judge, and bear date when issued, and when not otherwise provided by law, shall be made returnable to the next ensuing rule day of the court from which it issued.

Running in name of State of Florida defined.—State v. Gleason, 12 Fla., 190.

Ch. 1096, Acts of 1861, Sec. 1.

1394. (1009.) Not necessary to mention form of action in.—It shall not be necessary to mention any form of action in any writ of summons issued from the courts of this State.

Ib., Sec. 2.

1395. (1010.) Remedy for mistake in form of writ.—If one form of writ of summons shall, by mistake or inadvertence, be substituted for another, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action, but the writ may, upon an ex parte application to the court, whether before or after any application to set aside such writ or any proceedings thereon, and whether the same shall have been served or not, be amended by such court without costs.

Ch. 1639 Acts of 1861, Sec. 25.

1396. (1011.) Suits against corporations.—In all actions against any corporation, it shall be sufficient to issue a summons to the proper officer, commanding him to summons the said corporation, by its corporate name, to appear and answer the action on the proper return day, which summons shall be returnable in the manner and subject to the same rules and regulations as other process.

Suit by wrong name; remedy.—L'Engle v. F. C. & W. R. R. Co., 21 Fla., 353. Waiver of process; effect of.—Ochus v. Sheldon, 12 Fla., 138. Process amendable.—Guarantee, etc., Co. v. Buddington, 23 Fla., 514. 2 So. Rep. 885; Gilmer v. Bird, 15 Fla., 410. Omission to state damages named in praecipe does not make summons void.—Campbell v. Chaffee, 6 Fla., 724.

Ch. 4397, Acts of 1895, Sec. 1.

1397. Summons, how directed.—In all civil causes, summons ad respondendum, subpoenas and other process, when issued out of any circuit court of this State, shall run throughout the State, and be directed to all and singular the sheriffs of the State of Florida.

Sec. 1, Ch. 4027, Acts of 1891.

1398. In all civil causes in which the State is a party. Subpoenas, summons ad respondendum and other process, when issued in behalf of the State, shall run throughout the State, and be directed as in the preceding section.

ARTICLE 3.

PROCESS, HOW RETURNABLE.

1399. (1012.) Process, how returnable.—All writs of process, upon the institution of any suit, shall be made returnable to the next rule day thereafter, unless there shall not be ten days intervening between the day of the issuing of the same and the next rule day, in which case the same shall be made returnable to the rule day in the next succeeding month: Provided, however, That the provisions of the foregoing section shall not apply to writs of quo warranto, habeas corpus, mandamus and prohibition, which said writs shall be returnable at such time as the court may direct.

Ch. 1938, Acts of 1873, Sec. 5, as amended by Ch. 5148, Acts of 1903.

ARTICLE 4.

PROCESS, WHEN TO BE SERVED.

1400. (1013.) When to be served.—All process, upon the institution of a suit, shall be served at least ten (10) days before the rule day to which it is made returnable.

Nov. 23 1828, Sec. 4.

Defective service cured by appearance.—So. Fla. R. R. Co. v. Weese, 32 Fla., 212. 13 So. Rep. 436. Parkhurst v. Stone, 36 Fla., 456. 18 So. Rep. 596.

ARTICLE 5.

PROCESS, BY WHOM SERVED.

1401. (1014 and 1246.) Process, by whom served.—All process, except that issuing from a justice of the peace court, shall be served by the sheriff of the county in which it is to be served. Process of a justice of the peace court may be served by a sheriff of the county or by a constable. A justice of the peace in the respective counties may serve all process in cases where the sheriff is interested, and in case of necessity the judge of the circuit court may appoint an elisor to act instead of the sheriff.

Sec. 16, Act of July 22, 1845; Ch. 3721, Acts of 1887, Sec. 1.

All writs or process issued upon the institution of a suit which may be begun in a county where the defendant does not reside, and all writs, process or notices requiring service

upon a defendant not in the county where the suit is pending, may be served by the sheriff of the county in which the defendant is to be found.

When officer protected in service of process.—Camp v. Mosely, 2 Fla., 171.

Service of process on a sheriff by his deputy is void.—Seedhouse v. Broward, 34 Fla., 509. 16 So. Rep. 425.

ARTICLE 6.

PROCESS, HOW SERVED.

Nov. 23, 1828, Sec. 5.

1402. (1015.) Generally.—Service of the original writ or summons shall be effected by reading the writ or summons to the person to be served, or by delivering him a copy thereof, or by leaving such copy at his usual place of abode with some person of the family above fifteen years of age, and informing such person of the contents thereof.

If party to be served has no family and cannot be served personally writ may be served upon the person of requisite age who is a member of the family where party resides.—Pyles v. Beall, 37 Fla., 557. 20 So. Rep. 778.

Where action is local, summons must be served in the county where suit is pending.—Sanchez v. Haynes, 35 Fla., 515. 18 So. Rep. 27.

Ib. Sec. 64.

1403. (1016.) Upon defendant removing from county. If the defendant shall remove out of the county where an action has been commenced, and the officer to whom the process was directed shall so return, it shall be lawful to issue an alias writ of summons, and every other legal process necessary to enforce the appearance of such defendant, directed to the proper officer of any county in this State.

Ib., Sec. 13.

1404. (1017.) Upon a copartnership.—When any original process is sued out against several persons composing a mercantile or other firm, the service of said process on any one member of said firm shall be as valid as if served upon each individual member thereof; and the plaintiff may, after service upon any one member as aforesaid, proceed to judgment and execution against them all.

Such service binds only those actually partners.—Purviance v. Edwards, 17 Fla., 150.

Feb. 15, 1834, Sec. 4.

1405. (1018.) Upon a non-resident administrator.—Service upon any legally authorized and publicly known agent of any executor or administrator who resides or has removed beyond the limits of this State, shall be as valid as if it had been made upon the person of said executor or administrator.

1406. (1019.) Upon a private corporation.—Process against a corporation, domestic or foreign, may be served: Feb. 11, 1834, Sec. 2; Nov. 21, 1829, Sec. 8; Ch. 3590, Sec. 1, Feb. 12, 1885.

1. Upon the president or vice-president or other head of the corporation. In the absence of such head:

2. Upon the cashier, or treasurer, or secretary, or general manager; or, in the absence of all of the above:

3. Upon any director of such company; or, in the absence of all of the above:

4. Upon any business agent resident in the county in which the action is brought.

5. If a foreign corporation shall have none of the foregoing officers or agents in this State, service may be made upon any agent transacting business for it in this State.

1407. (1020.) Upon an incorporated college or academy. Process against an incorporated college or academy may be served upon the president or chief officer, or any visitor or trustee thereof. Feb. 11, 1834, Sec. 2.

1408. (1021.) Upon a municipal corporation.—Process against a municipal corporation may be served:

(a) Upon the mayor or chief magistrate; or, in his absence:

(b) Upon the recorder; or, in the absence of all of above:

(c) Upon any alderman or equivalent officer.

Service upon any officer of a municipal corporation shall be good only when made while he is in the limits of such corporation.

1409. (1022.) Upon a county.—Process against a county shall be served upon the chairman of the board of county commissioners, or, in his absence, upon two other members of said board. Ch. 3242, Acts of 1881, Sec. 1.

1410. (1023.) Effect of service upon a corporation. After service upon a corporation, the same proceedings to final judgment shall be had against such corporation as are had in other suits at law after the return of execution of summons ad respondendum. Feb. 11, 1834, Sec. 2.

1411. (1024.) Service upon domestic corporation in the absence of officers or agents.—When process against any corporation of this State cannot be served owing to the failure of said corporation to elect officers or appoint agents, their absence from the State for the period of six months be- Ch. 529, Acts of 1853, Sec. 1.

fore the issuing of said writ, or because they are unknown, it shall be the duty of the officer to return said writ, with the causes of his inability to serve the same, and upon the return of said writ as aforesaid, the judge of the court from which the same shall have issued shall make an order at any time, setting forth the names of the parties, the nature of the action, suit or other proceeding, the court in which the same has been instituted, and requiring the said corporation to appear and defend the said action, suit or other proceeding; and the publication of said order once a week for the space of two months in some newspaper published in the county in which said action, suit or other proceeding shall be instituted, shall be a full and sufficient notification to the said corporation of the institution of said action, suit or other proceeding. However, no judgment by default or decree pro confesso shall be taken or rendered against said corporation until due proof shall have been made of the publication of said order as hereinbefore provided.

Service on foreign building and loan association. Section 2750.

Service on foreign surety company.—Section 2784.

Sec. 1, Ch. 4132, Acts of 1893.

1412. Serving writs of scire facias.—In all cases where writs of scire facias be issued for the purpose of reviving a judgment and obtaining execution thereon, such writs may be served in a manner provided by law for the service of summons ad respondendum, or such writs may be served by publication whenever the plaintiff or his agent or attorney shall make and file in the case an affidavit that the defendant is, in his belief, a resident of a state or county other than this, or that his residence is unknown, or that he conceals himself so that process cannot be served upon him, in the following manner: The plaintiff or his attorney shall cause to be published once a week for four successive weeks, in a newspaper published in the county where the writ is issued, a notice of the issuance of the writ; such notice shall contain a brief statement of the purpose for which the writ is sued out, and shall command the defendant to appear to the writ on or before the rule day of the court from whence it issued next succeeding the last day of publication of the notice. Service of writs of scire facias as provided in the foregoing section, by publication, shall be taken and held as equivalent in all respects to personal service of such writs.

ARTICLE 7.

PROCESS, SERVICE ON SUNDAY.

1413. (1025.) Process, service of on Sunday.—Service or execution upon Sunday, of any writ, process or warrant, order, judgment or decree, shall be void to all intents and purposes whatever; and the person so serving or executing, or causing to be served or executed, the same shall be liable to the suit of the party aggrieved, and to answer damages to him for so doing, as if he had done the same without any process, writ, warrant, order, judgment or decree. However, if information shall be made by the oaths of two respectable persons to any judge or justice of the peace or magistrate of any corporate town, that they have good reason to believe that any person liable to have any such process, warrant, order, judgment or decree served upon him intends to withdraw himself, and escape from this State under cover of protection of Sunday, any officer duly authorized may, being furnished with a certificate of such information upon oath as aforesaid, under the hand of the judge, justice of the peace or magistrate as aforesaid, serve or execute such process, warrant, order, judgment or decree, on Sunday, which shall be as valid and effectually done, to all legal intents and purposes, as if the same had been done on any other day of the week. Nov. 23, 1828, Sec. 44.

ARTICLE 8.

RETURN OF PROCESS.

1414. (1026.) Return of execution of process.—All officers to whom process shall be directed shall note upon the same the time when it comes to hand, the time when it was executed, the manner of execution, and the name of the person upon whom it shall be executed, and if such person be served in a representative capacity, the position occupied by him. A failure to set forth the foregoing facts shall invalidate the service, but the return shall be amendable so as to state the truth at any time upon application to the court from which the process issued, and upon such amendment the service shall be as effective as if the return had originally stated such facts. A failure Ib., Sec. 18.

to state said facts in the return shall subject the officer so failing to a fine not exceeding ten dollars, at the discretion of the court.

Ib., Sec. 9.

1415. (1027.) Return of non-execution of process. — When an officer shall, for any cause, fail to execute process directed to him, he shall return the same "not executed," with the reason for such failure; and if such reason be insufficient, he shall be liable to a fine not exceeding fifty dollars, at the discretion of the court; and shall also be liable to the party injured for all costs and damages thereby incurred and sustained.

Effect of return.—Tidwell v. Witherspoon, 18 Fla., 283. How return must be made; proper return necessary for jurisdiction.—Standley v. Arnow, 13 Fla., 361.

CHAPTER XII.

APPEARANCE, FILING OF PLEADINGS, DEFAULTS AND JUDGMENTS UPON DEFAULTS

ARTICLE 1.—Time of entering appearance. Section..... 1416
2.—Time of filing pleas. Sections.....1417-1421
3.—Entering and opening defaults. Sections.....1422-1424
4.—Entering final judgment upon default. Sections.....1425-1426

ARTICLE 1.

TIME OF ENTERING APPEARANCE.

Ch. 1938, Sec. 6, Feb. 24, 1873; Ch. 1096, Sec. 4. Feb. 8, 1861.

1416. (1028.) Time of entering appearance.—The defendant shall enter his appearance on the return day of the writ or summons, but he shall not be compelled to enter it until the declaration be filed. He may appear at any time before entry of default for not appearing, but shall not be entitled to any further time for pleading or other proceedings than if he had appeared within the appointed time.

Appearance; clerk's memorandum of, as against attorney's contradiction.—Tidwell v. Witherspoon, 18 Fla., 282. General appearance waives defect in service of writ.—Smith v. Bulkley, 15 Fla., 64; Fla. R. R. Co. v. Gensler, 14 Fla., 122. Effect of appearance (and relief against) by unauthorized attorney.—Budd v. Gamble, 13 Fla., 265. Is entry by clerk, "Came the parties by their attorneys," evidence of appearance of parties?—Butler v.

Thompson, 2 Fla., 9. Effect of entry on docket by clerk.—Wood v. Bank, 1 Fla., 378. Special appearance; waiver of defect in service, when.—Stephens v. Bradley, 24 Fla., 201. 3 So. Rep. 415. When not; instance of.—Tidwell v. Witherspoon, 18 Fla., 282. Waiver of special appearance by contesting merits.—Scarlett v. Hicks, 13 Fla., 314. Appearance for purpose of objecting to proceedings does not necessarily waive irregularities in process.—Standley v. Arnow, 13 Fla., 361. Appeal by defendant equivalent to.—Ib.

ARTICLE 2.

TIME AND MANNER OF FILING PLEADINGS.

1417. (1029.) Time of filing declaration.—The plaintiff shall file his declaration on or before the rule day to which the process is made returnable, or on or before the next succeeding rule day, unless further time be allowed by the court.

Need not be filed before service of process.—Cook v. Cook, 18 Fla., 634. Dismissal for not filing is not of course, but a privilege of defendant.—Ochus v. Sheldon, 12 Fla., 138.

1418. (1030.) Time for filing pleas and demurrer.—The defendant shall file his plea or demurrer on the rule day succeeding that upon which the declaration is filed, unless, upon motion, further time be given by the court. He may plead, answer or demur at any time before default for not so doing. Ch. 1938, Acts of 1873 Sec. 6.

1419. (1031.) Time for filing replication.—Replications shall be filed at the rule day next succeeding that upon which the plea shall have been filed; but all issues shall be made up by the first day of the next succeeding term, and within such period from the filing of the plea, and as to the filing of the replication and other pleadings, as may be provided for by the rules of court existing, or which may be adopted. Ibid.

1420. When case considered at issue.—Any defendant who has filed a plea may give the plaintiff's attorney, or the plaintiff, if he has no attorney, notice of the same, and if the plaintiff does not take issue upon such plea, or reply, or demur to the same on the rule day succeeding that on which the plea is filed, the plaintiff shall be considered as having taken issue upon such plea and the case shall proceed to trial accordingly.

1421. Pleadings to be in duplicate.—Every party filing any pleading or paper or proceeding in any civil case at law

or in equity in any court, except those of justices of the peace, shall at the same time file a duplicate of such pleading, paper or proceeding. The clerk, or judge of said court if it have no clerk, shall keep two files of each case, one called the original file and the other the duplicate file. The duplicate file may at any time be delivered to any attorney of record in the cause upon his receipt showing that he is to return same within five days. The duplicates filed as provided by this section must contain copies of all causes of action, bills of particulars, or exhibits, attached to and forming part of the originals. Upon failure of any party or attorney to comply with the provisions of this section, the clerk, or judge of a court not having a clerk, shall make the duplicates provided for herein, for which he shall be allowed the fees provided by law for copying papers, and both or either the party in default and his attorney shall be liable for such fees.

ARTICLE 3.

ENTRY AND OPENING OF DEFAULTS.

Ch. 1938, Sec. 6 Feb. 24, 1873.

1422. (1032.) Entry upon rule days.—If the defendant shall fail to appear as hereinbefore provided, or shall fail to plead or demur, at the time hereinbefore provided, or at the time fixed by the court upon motion as hereinbefore provided, the plaintiff may cause a default to be entered by the clerk against the defendant, and thereupon he may proceed to take final judgment, as hereinafter provided.

To be entered only on proofs filed, which record must show.—Snell v. Irvine, 17 Fla., 234. Not proper for want of replication upon overruling demurrer to plea. What proper practice.—Wade v. Doyle, 17 Fla., 522. Not to be entered for want of plea, when good plea in cause.—Hooker v. Gallagher, 6 Fla., 351. Judgment by default upon sustaining demurrer to pleas, erroneous.—L'Engle v. L'Engle, 19 Fla., 714; Pettys v. Marsh, 24 Fla., 44. 3 So. Rep. 577. May be entered on the 4th day of July.—Russ v. Gilbert, 19 Fla., 54.

Sec. 1033, Rev. Stat. 1892. Nov. 23, 1828, Sec. 21.

1423. (1033.) Entry in term time.—In all cases standing upon the docket at the calling of the same, to which there is no plea or demurrer filed, the court shall, upon motion of the plaintiff, or his attorney, give a default, and may immediately refer the same to a jury to assess the damages; but if the said action be founded upon any of the demands mentioned in Section 1425 the court may direct the clerk, or the court may itself, if it has no clerk, proceed to assess the

damages and enter judgment and to issue execution accordingly.

Default for want of plea to a particular count.—Sinclair v. Gray, 9 Fla., 71. When not founded upon a liquidated demand is referred to a jury.—Parkhurst v. Stone, 36 Fla., 463. 18 So. Rep. 594.

1424. (1034.) Opening of defaults.—The court may, for good cause shown upon any default for want of appearance or plea, set aside such default, and allow the defendant to demur or plead within a period of time to be fixed by the said court; but the application therefor must be made within sixty days from the time of the entry of such default, unless a term of the court shall in the meantime be held, when such application must be made during such term. Ch. 1938, Sec. 6, Feb. 24, 1873.

Opening of default is in sound discretion of court below. When discretion controls.—Russ v. Gilbert, 19 Fla., 54; Tidwell v. Witherspoon, 18 Fla., 282; Loring v. Wittich, 16 Fla., 617. Applies to default and not to judgment upon default.—Burrows v. Mickler, 22 Fla., 577. Neglect of attorney as affecting right to open.—Tidwell v. Witherspoon, 18 Fla., 282; Watson v. Seat, 10 Fla., 326. Refused if applicant negligent.—Ib. Opening after reversal and remand by appellate court.—Parker v. Hendry, 8 Fla., 53.

What confessed by default. What defendant may contest afterwards.—Russ v. Gilbert, 19 Fla., 54; Watson v. Seat, 8 Fla., 446.

A judgment by default entered by a clerk when a plea is on file is void.—Mickler v. Reddick, 38 Fla., 54. 21 So. Rep. 286. Sixty days limitation does not apply to a void judgment.—Ib. When judgment not void.—Einstein v. Davidson, 35 Fla., 342. 17 So. Rep. 563.

ARTICLE 4.

ENTRY OF FINAL JUDGMENT UPON DEFAULT.

1425. (1035.) Upon personal service.—Upon the entry of any default for want of appearance or for want of demurrer or plea in any suit for the recovery of money founded upon contract, if the action is on a written instrument for the payment of money, the plaintiff at any time after such default may on the production and filing of such instrument cause final judgment to be entered for the amount thereof, with interest, and the clerk of the court (or the judge, if the court has no clerk), shall assess the amount which the plaintiff is entitled to recover for the principal and interest, and enter up judgment for the same, upon which judgment execution shall issue immediately unless otherwise ordered by the court. And if the action is upon an open account, or Ib., Sec. 7.

other contract for the payment of money not in writing, upon the entry of a default as aforesaid, the clerk (or the judge, if the court has no clerk), shall ascertain the amount which the plaintiff is entitled to recover in such action from the examination of the plaintiff under oath, or other proofs by affidavit or otherwise, and enter up judgment for the amount so assessed or ascertained, upon which judgment execution shall issue as aforesaid.

Acts of clerk not in conformity with statute not binding.—Blount v. Gallagher, 22 Fla., 92. Proof upon final judgment must conform to allegations.—Wilson v. Friedenberg, 22 Fla., 114. Entry on default as to one joint defendant and verdict as to other.—Netso v. Foss, 21 Fla., 143. Entry by clerk constitutional.—Gamble v. J. P. & M. R. R. Co., 14 Fla., 226.

Judgment must be entered upon proof which must be shown by the record.—Ropes v. Snyder, 37 Fla., 529. 20 So. Rep. 525.

Clerks not authorized to enter judgment in cases of tort.—Stubbs v. Franklin Lumber Co., 42 Fla., 370. 29 So. Rep. 317. Practice in cases where demurrer to plea is sustained.—Porter v. Panlow, 39 Fla., 50. 21 So. Rep. 574. Error to enter final judgment by default upon a bond without production of the bond.—West v. Fleming, 36 Fla., 298. 18 So. Rep. 587. Judgment by default can be entered after expiration of time given to plead upon overruling a demurrer.—Jordan v. John Ryan Co., 35 Fla., 259. 17 So. Rep. 73.

Ib., Sec. 8.

1426. (1036.) Default, and final judgment upon constructive service.—In actions where the service of the summons or a notice of the institution of the suit is by publication, the plaintiff, at the rule day named in the publication for the appearance of the defendant, may enter a default if the defendant shall fail to appear and answer the declaration as may be required, and thereupon he may apply to the court for final judgment; and the court must thereupon require proof to be made, either by the production of the cause of action, if in writing, and if not, then by examination under oath of the plaintiff, or other proof by affidavit or otherwise, and if the defendant is a non-resident of the State must require the plaintiff or his agent to be examined on oath respecting any payments that may have been made to the plaintiff, or to any one for his use, on account of the demand sued on, and may render judgment for the amount which the plaintiff is entitled to recover, upon which an execution may issue as in other cases.

Can be entered only by court or judge.—Marshall v. Ravisies, 22 Fla., 583.

Final judgment must show evidence on which based.—Blount v. Gallagher, 22 Fla., 92; Snell v. Irvine, 17 Fla., 234; Coons v. Harlee, 17 Fla., 484. Not proper on sustaining demurrer to plea. Proper practice.—Garlington v. Priest, 13 Fla., 559. Judgment and antecedent proceedings must appear to be correct on inspection of record.—Wood v. Bank, 1 Fla., 378. Not reversed for mere irregularities.—Ib. The evidence on which final judgment was en-

tered must be filed by clerk.—Ropes v. Snyder Harris Bassett Co., 37 Fla, 564. 20 So. Rep. 535.

Judgment.—Entry of default.—Motion to dismiss.—Special appearance.—Opening default.—Dudley et al. v. White, 44 Fla., 371; 31 So. Rep. 833.

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CHAPTER XIII.

PLEADINGS AT LAW.

ARTICLE 1.—Certain common law requirements dispensed with. Sections 1427-1431
2.—Amendments of pleadings and proceedings. Sections..1432-1435
3.—Averment of conditions precedent. Section..... 1436
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ARTICLE 1.

CERTAIN COMMON LAW REQUIREMENTS DISPENSED WITH.

1427. (1037.) Express color, special traverse, etc.—Neither express color nor special traverses shall be necessary in any pleading. In any plea or subsequent plea it shall not be necessary to use any allegation of actionem, or actionem ulterius non, or to the like effect, or any prayer for judgment; nor shall it be necessary in any replication or subsequent pleading to use any allegation of precludi non, or to the like effect, or any prayer for judgment. Ch. 1096, Sec. 24, Feb. 8, 1861.

Use of formal allegation improperly does not invalidate pleading.—Stafford v. Anders, 8 Fla., 34.

1428. (1038.) Statements which need not be proved.—All statements which need not be proved, such as statements of time, quantity, quality and value, when these are immaterial; the statement of losing and finding and bailment, the statement of acts and trespass having been committed with Ib., Sec. 13.

force and arms; the statement of promises in indebitatus counts, and all statements of a like kind shall be omitted.

When time essential, pleas setting forth fact must be certain.—McKay v. Lane, 5 Fla., 268. If formal allegation made, need not be proved unless it identifies or is descriptive.—Barrett v. Doggett, 6 Fla., 332. Applied to time.—Dawkins v. Smithwick, 4 Fla., 158. But if material is traversable and must be proved.—Ib.

Ib., Secs. 17 and 18.

1429. (1039.) Profert.—It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and if profert shall be made, it shall not entitle the opposition party to crave oyer or a set out upon oyer of such deed or other document.

But a party pleading in answer to any pleading in which any document is mentioned or referred to, shall be at liberty to set out the whole or such part thereof as may be material, and the matter so set out shall be deemed and taken to be a part of the pleading in which it is set out.

Ib., Sec. 16.

1430. (1040.) Special demurrers.—No pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer.

Camp Bros. v. Hall, 39 Fla., 535. 22 So. Rep. 792.

Nov. 21, 1828. Sec. 6.

1431. (1041.) Pleading private acts of the Legislature.—Private acts of the Legislature shall not be pleaded specially, but printed copies thereof may be given in evidence without being specially pleaded.

ARTICLE 2.

AMENDMENTS OF PLEADINGS AND PROCEEDINGS.

Nov. 23, 1828, Secs. 25, 50; Ch. 1096, Sec. 74, Feb. 8, 1861.

1432. (1042.) Voluntary amendments.—Upon application of any party desiring amendment, the courts of this State shall at all times amend all defects and errors in any pleading or proceeding in civil causes, whether there is anything to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments shall be made with or without costs, and upon such terms as the court may deem fit; and all such amendments as may be deemed necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made, if duly applied for.

Doctrine of amendment at common law.—Stewart v. Bennett, 1 Fla., 437.

Amendment of pleading and process.—By striking out name of plaintiff by inserting name of next friend.—Neal v. Spooner, 20 Fla., 38. Of petition to establish lost paper.—Hart's extr. v. Smith, 20 Fla., 58. After remand by

Supreme Court.—Ib. By interlining original.—Hyer v. Vaughn, 18 Fla., 647. Of record after judgment by default; effect of.—Loring v. Wittich, 16 Fla., 617. Of plea during trial.—Robinson v. Hartridge, 13 Fla., 501. By filing new plea after demurrer sustained, is not, of course.—Garlington v. Priest, 13 Fla., 559. By pleading statute of limitations.—Mitchell v. Cotton, 3 Fla., 134. Of pleadings after arrested judgment.—Butler v. Thompson, 2 Fla., 9. After new trial.—Stewart v. Bennett, 1 Fla., 437. How long pleadings amendable.—Ib.

Amendment of verdicts, judgments and executions.—Of verdict after discharge of jury.—Miller v. Hoc, 1 Fla., 189. Amendment of judgment; when and how made.—Sedgwick v. Dawkins, 16 Fla., 198. By entry of judgment nunc pro tunc.—Frier v. State, 11 Fla., 300; Hagler v. Mercer, 6 Fla., 721. Of judgment and execution nunc pro tunc.—Adams v. Higgins, 23 Fla., 13; Adams v. Requa, 22 Fla., 230. No amendment of improper judgment entered by clerk.—Higgins vs. Driggs, 21 Fla., 103. Of judgment by default.—Loring v. Wittich, 16 Fla., 617.

Amendment in Supreme Court.—Nunc pro tunc.—Stevens v. Bradley, 23 Fla., 393. 2 So. Rep. 667. When notice given and when not required.—Ib. Of sci. fa. ad. aud. errores.—Weisoph v. Dibble, 18 Fla., 22. Of errors apparent of record.—Brett v. Ming, 1 Fla., 447, e. g., by making person party when apparent that he was party in court below.—Ib. Will consider amendments made which ought to have been allowed below.—Campbell v. Chaffee, 6 Fla., 724.

Waiver of right to amend.—By submitting law and fact to court.—Frier v. State, 11 Fla., 300. Writ of error amendable in Supreme Court.—Loring v. Wittich, 16 Fla., 323; Williams v. Pitt, 38 Fla., 162. 20 So. Rep. 936. Citation amendable.—Whitlock v. Willard, 18 Fla., 156. An entry of appeal cannot be amendable in the appellate court.—Stockton v. Harmon, 32 Fla., 312. 13 So. Rep. 833.

Not the duty of court to sua sponte direct amendments, but the party desiring to amend should make application.—Parrish v. P. & A. R. R. Co., 28 Fla., 251. 9 So. Rep. 696. Courts have broad discretion in allowing amendments.—Smith v. Westcott, 34 Fla., 430. 16 So. Rep. 332.

Duty of trial court.—American Lead Pencil Co., vs. Wolfe, 30 Fla., 360. 11 So. Rep. 488.

Pleadings defective for want of signature may be amended instanter.—Crawford v. Feeder, 34 Fla., 397. 16 So. Rep. 287.

1433. (1043.) Compulsory amendments.—If any pleading be so framed as to prejudice or embarrass or delay the fair trial of the action, the opposite party may apply to the court to strike out or amend such pleading, and the court shall make such order respecting the same, and also respecting the costs, as it shall see fit. Ib., Sec. 16.

Compulsory amendment; proper remedy for meritorious defence defectively pleaded.—Jackson & Sharp Co. v. Holland, 14 Fla., 384. Only wholly irrelevant and not merely informal, and bad pleas stricken out on motion.—Russ v. Mitchell, 11 Fla., 80.

1434. (1044.) Pleading by opposite party after amendment.—When an amendment of any pleading is allowed, the Ib., Sec. 37.

opposite party shall be bound to plead to the amended pleading within two days after notice in writing that the amendment has been made, when the amendment is made during term, unless otherwise ordered by the court; and in case the amended pleading has been pleaded to before amendment, and it is not pleaded to de novo within said two days, or within such other time as the court may allow, the pleading originally pleaded thereto shall stand and be considered as pleaded in answer to the amended pleadings. When the amendment is allowed during vacation the court, in the order allowing the amendment or otherwise, shall direct the time for pleading thereto.

Sec. 1, Ch. 4232, Acts of 1893.

1435. Amendment of bonds in certain cases.—Whenever by mistake or inadvertence any bond required to be given in any suit in which a writ of attachment or writ of replevin shall be issued, or any bond to a sheriff or other officer for the release of property levied on, or any bond on appeal or writ of error, and such bond shall be found to be defective in form or substance, it shall be lawful for the party in whose behalf such bond shall be given to amend by giving a new bond sufficient in form and substance, before any motion to dismiss proceedings on account of such defects shall be decided, and such new bond shall be taken and held as good and sufficient as though given in the first instance.

In cases of appeal or of writ of error, the application for leave to amend such bond shall be heard and determined by the appellate court, and such amendment may be made on such terms as may seem just.

ARTICLE 3.

AVERMENT OF CONDITIONS PRECEDENT.

Ch. 1096, Acts of 1861, Sec. 19.

1436. (1045.) Averment of conditions precedent.—Either party in an action may aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify in his pleading the condition precedent the performance of which he intends to contest.

Construction of this section.—Wilcox v. Stephenson, 30 Fla., 377. 11 So. Rep. 659.

A plea cannot aver performance of conditions generally.—Livingston v. Anderson, 30 Fla., 117. 11 So. Rep. 270.

ARTICLE 4.

PLEADINGS TO BE TAKEN DISTRIBUTIVELY.

1437. (1046.) Pleadings to be taken distributively.—All pleadings capable of being taken distributively shall be so taken. Ib., Sec. 29.

ARTICLE 5.

EQUITABLE PLEADINGS.

1438. (1047.) Defendant's equitable pleadings.—The defendant in any cause in any of the courts of this State in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, may plead by plea or subsequent pleading the facts which entitle him to such relief by way of defence. Ib., Secs. 69 and 70.

Such plea shall begin with the words: "For defence on equitable grounds," or words to the like effect.

Any such matter, which, if it arose before or during the time of pleading, would be an answer to the action by way of plea, may, if it arises after the lapse of the period during which it could be pleaded, be set up by way of audita querela.

This section construed.—Bacon v. Green, 36 Fla., 325. 18 So. Rep. 870. Great particularity required in framing equitable pleas.—Rivers v. Rivers, 38 Fla., 65. 20 So. Rep. 807.

Equitable pleas in actions at law will be stricken on motion when the matters set up therein present no equitable defence and are available at law.—Robeson v. First National Bank of Orlando, 42 Fla., 504. 29 So. Rep. 325.

Stating defence available at law stricken out.—Johnson v. Allen, 22 Fla., 224. What not permissible.—Marshall v. Bumby, 25 Fla., 619. 6 So. Rep. 480; Horne v. Carter's admr., 20 Fla., 45; Fla. Central R. R. Co. v. Bisbee, 18 Fla., 60. Remedy against improper equitable plea.—Horne v. Carter's admr., 20 Fla., 45; Spratt v. Price, 18 Fla., 289.

1439. (1048.) Plaintiff's equitable pleadings.—The plaintiff may reply, rejoin, etc., in answer to any plea, etc., of the defendant, facts which would avoid such plea, etc., upon equitable grounds. Ib. Sec. 71.

Such replication, etc., shall begin with the words: "For replication on equitable grounds," or to the like effect.

1440. (1049.) Striking out equitable pleadings.—If it shall appear to the court that any such equitable pleading cannot be dealt with by a court of law, so as to do justice Ib., Sec. 72.

between the parties, such court may order the same to be struck out on such terms as to costs and otherwise as to it may seem reasonable.

ARTICLE 6.

DEMURRERS.

Ib., Sec. 14.

1441. (1050.) Grounds of and judgment on.—Either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defence or reply, as the case may be, and when such demurrer shall be disposed of the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto said court, without regarding any imperfection, omission, defect in or lack of form.

Demurrer proper remedy against unresponsive plea.—Wilson v. Marks, 18 Fla., 322.

Ib., Sec. 84.

1442. (1051.) Party may demur and plead at the same time.—Either party may plead and demur to the same pleading at the same time, and it shall be in the discretion of the court to direct which issue shall be first disposed of.

Order of disposition of, in sound discretion of court below.—Myrick v. Merritt, 22 Fla., 335. Construed.—Wade v. Doyle, 18 Fla., 630.

Nov. 23, 1828, Sec. 27.

1443. (1052.) Effect of demurrer.—No demurrer shall be considered as an admission of the facts set forth in the pleadings demurred to, so as to debar the person demurring from any substantial claim or defence which he might have urged if said demurrer had not been filed.

Demurrer reaches back to first error.—Myrick v. Merritt, 22 Fla., 335; Stokes v. Baars, 18 Fla., 656; Price v. Drew, 18 Fla., 670; Wade v. Doyle, 17 Fla., 522; Johnson v. P. & P. R. R. Co., 16 Fla., 623; Jacksonville v. Aetna Steam, etc., Co., 20 Fla., 100; Governor for use, etc., v. Hooker's extr., 19 Fla., 163; Hooker v. Gallagher, 6 Fla., 351; Parkhill's admr. v. Union Bank, 1 Fla., 110. But not in distinct pleadings on which issue has been taken.—Sanford v. Cloud, 17 Fla., 532. On demurrer whole record considered and judgment given for party entitled.—Miller v. Kingsbury, 8 Fla., 356; Parkhill's admr. v. Union Bank, 1 Fla., 110. Demurrer to plea to whole declaration responsive to only part of the counts is good.—Price v. Drew, 18 Fla., 670. Demurrer waives objection that pleading demurred to was not filed in time.—Manly v. Union Bank, 1 Fla., 160. Demurrer to whole declaration containing one good count, bad.—McKay v. Friebele, 8 Fla., 21; Barber v. J. & A. P. R. R. Co., 6 Fla., 262.

If declaration shows plaintiff entitled to anything, the extent of recovery cannot be tested by demurrer.—Borden v. W. U. Tel. Co., 32 Fla., 394. 13 So.

Rep. 876. A defect of form cannot be reached by general demurrer.—Camp v. Hall, 39 Fla., 535. 22 So. Rep. 792.

1444. (1053.) Forms of demurrer and joinder thereon.—The form of a demurrer shall be as follows, or to the like effect: "The defendant (or plaintiff) says that the declaration (or plea) is bad in substance." And the substantial matters of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement or with a frivolous statement, it may be set aside by the court. The form of a rejoinder in demurrer shall be as follows, or to the like effect: "The plaintiff (or defendant) says that the declaration (or plea) is good in substance." Ch. 1096, Acts of 1861, Sec. 36.

Objection that praecipe and declaration were not signed cannot be raised by demurrer.—Crawford v. Feeder, 34 Fla., 397. 16 So. Rep. 287.

Failure to attach a copy of cause of action to the declaration is not ground of demurrer.—Martin v. Arnold, 36 Fla., 446. 18 So. Rep. 791; Barbee v. Jacksonville & A. P. R. R. Co., 6 Fla., 262.; Dibble v. Same.—Ib., 279. Failure to verify a plea by oath is not ground of demurrer.—Hagler v. Mercer, 6 Fla., 342.

Substantial matters should be stated in the margin.—Stephens v. Bradley, 24 Fla., 201. 3 So. Rep. 415. Speaking demurrers.—State ex rel. v. Commissioners Putnam County, 23 Fla., 632. 3 So. Rep. 164.

1445. (1054.) Notice of hearing demurrer.—Demurrers may be heard in vacation upon five days' notice by either party of the time and place when and where the hearing will be had. Ch. 1958, Acts of 1873, Sec. 10.

Proper entry on sustaining demurrer to declaration.—Hower v. Lewton, 18 Fla., 328.

1446. Demurrer to evidence.—A party demurring to the evidence shall not be precluded from proving his case if his demurrer be adjudged bad, but he may at his option withdraw his demurrer or permit judgment therein to be rendered against him. Withdrawing the demurrer shall not be held to be a waiver of the right to assign the decision thereon as error in the appellate court. Sec. 1, Ch. 4396, Acts of 1895.

Province of a demurrer to evidence.—Ingram v. Jacksonville St. R. R. Co., 43 Fla., 324. 30 So. Rep. 800; Fee v. Fla., etc., Co., 36 Fla., 612. 18 So. Rep. 853; Wilkinson v. P. & A. R. R. Co., 35 Fla., 82. 17 So. Rep. 71; Hanover Fire Insurance Co. v. Lewis, 23 Fla., 193. 1 So. Rep. 863; Higgs v. Shehee, 4 Fla.. 382.

Demurrer to evidence not allowed unless demurrant admits upon the record all facts which the evidence conduces to prove.—Hinote v. Simpson, 17 Fla., 444. Practice in assessing damages.—Hanover Fire Insurance Co. v. Lewis, supra. In criminal cases.—Duncan v. State, 29 Fla., 139. 10 So. Rep. 815.

ARTICLE 7.

JOINDER OF ISSUE.

Ch. 1096, Acts of 1861, Sec. 33.

1447. (1055.) Joinder of issue.—Either party may plead in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect: "The plaintiff joins issue upon the defendant's first plea." "The defendant joins issue upon the plaintiff's replication to the first plea;" and such forms of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where plaintiff's pleading is in denial of the pleading of the defendant, or some part of it, the plaintiff may add a joinder of issue for the defendant.

Similiter.—Absence of not ground for reversal.—Wilson v. Hunter, 25 Fla., 469. 6 So. Rep. 432; Huling v. Florida Savings Bank, 19 Fla., 695; Burk v. Clark, 9 Fla., 9. Nor is compulsion by court to file immediately.—Green v. King, 17 Fla., 452. Presumption as to filing similiter in time.—Bowden v. L'Engle, 13 Fla., 571.

Failure to join issue on a plea of general issue by a similiter is waived by trial without objection.—St. Johns, etc., R. Co., v. Shelly, 33 Fla., 397. 14 So. Rep. 890; Same v. Ranson, 33 Fla., 406. 14 So. Rep. 892. Case tried upon its merits will not be reversed because issue not joined on a plea of not guilty.—Fla. R. & N. Co. v. Webster, 25 Fla., 394; 5 So. Rep. 714; Wilson v. Hunter, 25 Fla., 469. 6 So. Rep. 432; Frank v. Williams, 36 Fla., 136. 18 So. Rep. 351; Barrs v. Brace, 38 Fla., 265. 20 So. Rep. 991. Where plea sets up new matter reply must be made or issue joined.—Livingston v. Anderson, 30 Fla., 117. 11 So. Rep. 270; Gunning v. Heron, 25 Fla., 846. 6 So. Rep. 855. Plea of nul tiel record does not present new matter.—Sammis v. Wightman, 31 Fla., 10. 12 So. Rep. 256. The case will be considered on the issue joined.—Clyde S. S. Co., v. Burrows, 36 Fla., 121. 18 So. Rep. 349.

ARTICLE 8.

PLEADINGS OF THE PLAINTIFF.

DECLARATIONS.

Ib., Sec. 20.

1448. (1056.) Generally. Beginning and conclusion.—Every declaration shall commence as follows, or to like effect: (Venue) "A B by E F, his attorney (or in person) sues C B" for (here state the cause of action). And shall conclude as follows, or to the like effect: "And the plaintiff claims $....." or (if the action is brought to recover specific

goods), "the plaintiff claims a return of said goods or their value and $.....for their detention."

Ad damnum in replevin.—Anderson v. Carlin, 24 Fla., 199. 3 So. Rep. 577. Remedy for and waiver of variance between damages in declaration and in praecipe and writ.—Cooper v. Livingston, 19 Fla., 684. Omission of signature of attorney; when immaterial.—Huling v. Florida Savings Bank, 19 Fla., 695.

1449. (1057.) In special cases:

1. For Libel and Slander.—In actions of libel and slander the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and when the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient. Ib., Sec. 21.

What language is libelous per se.—Jones v. Greeley, 25 Fla., 625. 6 So. Rep. 448; Montgomery v. Knox., 23 Fla., 595. 3 So. Rep. 211; Jones v. Townsend's admr., 21 Fla., 431. Charge as to defamatory sense. Financial ability of defendant. Amount of verdict.—Jones v. Greeley, supra. Effect of plea not guilty. Mitigation of damages. Privilege.—Montgomery v. Knox, 23 Fla., 595. 3 So. Rep. 211; Jones v. Townsend's admr., 21 Fla., 431. Plea of justification. Good motives.—Ib.; Wilson v. Marks, 13 Fla., 322. Evidence of special damages when not alleged.—Ib. Want of probable cause.—Montgomery v. Knox, supra.

2. On Bonds, etc., Cause of Action To Be Filed.—All bonds, notes, bills of exchange, covenants and accounts upon which suit may be brought, or a copy thereof, shall be filed with the declaration. Nov. 23, 1828 Sec. 38.

Not evidence.—Belton v. O'Brien's admr., 20 Fla., 126. If filed with original declaration need not be filed with amendment. Effect of not so doing.—Robinson v. Dibble's admr., 17 Fla., 457. Absence of, not reached by demurrer.—Hooker v. Gallagher, 6 Fla., 351; McKay v. Lane, 5 Fla., 268; Martyn v. Arnold & Co., 36 Fla., 446. 18 So. Rep. 791. Remedy of defendant.—Waterman v. Mattair, 5 Fla., 211. Cannot be demanded after plea except upon order of court.—Ib.

Rule for determining whether the claim is for liquidated damages or for penalty.—Smith v. Newell et al., Trustees, 37 Fla., 147. 20 So. Rep. 249; Frazier v. Boggs, 37 Fla., 307. 20 So. Rep. 245.

Where it is agreed upon the record that a bill of particulars be treated as a part of the declaration, the appellate court will also regard it.—First Nat. Bank v. S., F. & W. Ry. Co., 36 Fla., 183. 18 So. Rep. 345. Purpose of filing a cause of action.—Ib.

1450. (1058.) Forms of declarations.—The following forms shall be sufficient in the statement of the declaration of the respective causes of action therein set forth. They and Ch. 1096, Acts of 1861, Sec. 38.

like forms may be used with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity.

STATEMENT OF CAUSES OF ACTION ON CONTRACTS.

1. Goods Sold.—Money payable by the defendant to the plaintiff for (these words, "Money payable," etc., should precede money counts, but need only to be inserted in the first) goods bargained and sold by the plaintiff to the defendant.

2. Work and Materials.—Work done and materials furnished by the plaintiff for the defendant at his request.

3. Money Lent.—Money lent by the plaintiff to the defendant.

4. Money Paid.—Money paid by the plaintiff for the defendant at his request.

5. Money Received.—Money received by the defendant for the use of the plaintiff.

Lies for money paid by mistake.—Hollbrook v. Allen, 4 Fla., 37. When lies: evidence under.—Gordon v. Camp, 2 Fla., 422.

6. Accounts Stated.—Money found to be due from the defendant to the plaintiff on accounts stated between them.

7. For Land Sold.—Messuage and land sold and conveyed by the plaintiff to the defendant.

8. For Good Will.—The good will of a business of the plaintiff sold and given up by the plaintiff to the defendant.

9. For the Use of a House and Land.—The defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff.

10. For Hire of Goods, etc.—The hire of (as the case may be), by the plaintiff let to hire to the defendant.

11. For Freight.—Freight for the conveyance by the plaintiff for the defendant, at his request, of goods in ships.

12. For Demurrage.—The demurrage of a ship of the plaintiff kept in demurrage by the defendant.

13. Payee Against Maker of Note.—That the defendant, on the ..... day of ....., A. D. 18.., by his promissory note, now overdue, promised to pay to the plaintiff $.... (6) months after date, but did not pay the same.

14. Endorsee Against Endorser of Note.—That one A. M., etc. (date), by his promissory note, now overdue, promised to pay to the defendant or order $.... (6) months after

date; and the defendant endorsed the same to the plaintiff; and the said note was duly presented for payment and was dishonored, whereof the defendant had due notice, but did not pay the same.

15. Drawer Against Acceptor of Bill.—That the plaintiff, on, etc. (date), by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff $.... (2) months after date, and the defendant accepted the said bill, but did not pay the same.

16. Payee Against Drawer.—That the defendant, on, etc. (date), by his bill of exchange, directed to A., required A. to pay the plaintiff $.... (2) months after date; and the said bill was duly presented for acceptance, and was dishonored, of which defendant had due notice, but did not pay the same.

17. Breach of Promise of Marriage.—That the plaintiff and defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the plaintiff has always been willing and ready to marry the defendant, yet the defendant has neglected and refused to marry the plaintiff.

18. Warranty of a Horse.—That the defendant, by warranting a horse to be then sound and quiet to ride, sold the said horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

19. For Not Loading Pursuant to Charter Party.—That the plaintiff and defendant agreed, by charter party, that the plaintiff's ship, called the "Ariel," should with all convenient speed sail to "R," or so near thereto as she could safely get, and that the defendant should there load her with a full cargo of ..... or other lawful merchandise, which he should carry to "H," and there deliver, on payment of freight $.... per ton, and that the defendant should be allowed ten days for loading, and ten for discharge, and ten for demurrage, if required, at $.... per day; and the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the ship at "R," and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

20. Upon a Lease for Rent.—That the plaintiff let to the defendant a house, No. ....., Quincy, for ..... years, to hold from the .... day of ....., A. D. 19.., at $.... a year, payable quarterly, of which rent ..... quarters are due and unpaid.

21. Upon a Covenant to Repair.—That the plaintiff, by deed, let to the defendant a house, No. ....., Quincy, to hold for ..... years from the ..... day of .....

A. D. 19.., and the defendant, by the said deed, covenanted with the plaintiff well and substantially to repair the said house during the said term (according to the covenant), yet the said house was, during the said term, out of good and substantial repair.

Action of covenant lies only upon instrument under seal.—Mitchell v. St. Andrews Bay, etc., Company, 4 Fla., 200.

Ch. 4935, Acts of 1901.

22. Upon a Fire Insurance Policy.—A. B., plaintiff, by C. D., his attorney, sues the ..... Insurance Company (state if a corporation or otherwise), defendant, for that in consideration of ..... dollars, to it paid and payment acknowledged, the said defendant issued to plaintiff its policy of insurance, and thereby promised the plaintiff, in the terms of the said policy and upon the conditions thereto annexed, to insure the said plaintiff against loss or damage by fire to the amount of ..... dollars, and to make good unto said plaintiff the loss or damage that should happen by fire, not exceeding said sum of ..... dollars, for the term of ..... years from the ..... day of A. D. ...., to the ..... day of ..... A. D. ...., on a certain (here describe the property and its location), the loss to be paid ..... days after due notice and proofs made by the plaintiff and received by the defendant, and in the said policy sundry provisions, conditions, prohibitions and stipulations were and are contained, and thereto annexed as by the original policy (or copy), filed herewith and made a part of this declaration, will more fully appear. And afterwards, to-wit: ....., the said (here describe property), so assured and in said policy described, was burned and destroyed by fire (if partly destroyed, so state), and damage and loss was thereby occasioned to said plaintiff to the amount of ....., in such circumstances as to come within the promise and undertaking of said policy, and to render liable and oblige the said defendant to insure the said plaintiff to the said amount of ..... dollars on the property aforesaid, of which loss the defendant had due notice, on to-wit ....., and although all conditions have been performed and fulfilled, and all events and things existed and happened, and all periods of time have elapsed to entitle the plaintiff to a performance by the defendant of said contract, and to entitle plaintiff to the said sum of ..... dollars, and nothing has occurred to prevent the plaintiff from maintaining this action, yet the said defendant has not paid or made good to said plaintiff the said amount of the loss and damage aforesaid, or any part thereof, but refuses to do so.

FOR WRONGS INDEPENDENT OF CONTRACT.

23. Trespass to Land.—That the defendant broke and entered certain land of the plaintiff called Big Field, and depastured the same with cattle.

Proof of title in.—Tison v. Broward, 17 Fla., 465. Effect of plea of not guilty and property in defendant.—Ib. Is local action in which plaintiff must prove venue.—MacMillan v. Lacy, 6 Fla., 526.

24. Assault, Battery and False Imprisonment.—That the defendant assaulted and beat the plaintiff, gave him in custody of a policeman and caused him to be imprisoned in a police office.

Sufficiency of declaration.—Stephens v. Bradley, 24 Fla. 201. 3 So. Rep. 415.

25. Criminal Conversation.—That the defendant debauched and carnally knew the plaintiff's wife.

26. Wrongful Conversion of Goods.—That the defendant converted to his own use or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods; that is to say, iron, hops (or as the case may be).

27. Wrongful Detention of Property.—That the defendant detained from the plaintiff his title deeds of land, called ....., in the county of .....; that is to say (describe the deeds, etc.).

28. Defamation of Character.—That the defendant falsely and maliciously spoke and published of the plaintiff the words following; that is to say, "He is a thief." (If there is any special damage, state it with reasonable certainty, so as to give notice to defendant of the peculiar injury complained of; for instance, Whereby the plaintiff lost his situation as clerk in the employ of A.)

Declarations in general.—Sufficient statement of facts.—Bucki v. Cone, 25 Fla., 1; 6 So. Rep. 150. By passenger against railroad company for wrongful expulsion.—So. Fla. R. R. Co. v. Rhodes, 25 Fla., 40; 5 So. Rep. 633. For deceit.—Williams v. McFadden, 23 Fla., 143; 1 So. Rep. 618. Waterman v. Mattair, 5 Fla., 211; W. Fla. Land Co. v. Studebaker, 37 Fla., 23; 19 So. Rep. 176. On conditional acceptance.—Myrick v. Merritt, 22 Fla., 335. On injunction bond.—Tallahassee R. R. Co. v. Hayward, 4 Fla., 441; Wittich v. O'Neal, 22 Fla., 592. Difference between in tort and in contract for breach of public duty.—Jacksonville St. R. R. Co. v. Chappell, 22 Fla., 616. For misuse of hired horse.—West v. Blackshear, 20 Fla., 457. Upon bond issued under act of Legislature.—Jefferson Co. v. Lewis, 20 Fla., 980. Sufficient to set forth legal effect of instrument.— Harrell v. Durrance, 9 Fla., 490. Should state notice to defendant of fact lying more properly in knowledge of plaintiff.—A. & F. R. R. Co. v. Rowley, 9 Fla., 508. Upon an attachment bond.—Steen v. Ross, 22 Fla., 480. Sufficient allegation of a common carrier.—Bennett v. Filyau, 1 Fla., 403. Practice when damages claimed greater than in writ.—Cooper v. Livingston, 19 Fla., 84. For damages to value of

real estate by railroad in street when demurrable.—Fla. So. Ry. Co. v. Brown, 23 Fla., 104; 1 So. Rep. 512. Defective when cured by verdict and judgment.—Eubanks v. Doggett, 2 Fla., 49. Entire failure to state sufficient facts available at any stage of the case.—Pittman v. Myrick, 16 Fla., 692. Good and bad counts when judgment will be sustained.—Gregory v. McNealy, 12 Fla., 578. Suit on injunction bond, sufficient averments and requisite averments.—Ib. Libel sufficiency in.—Montgomery v. Knox, 23 Fla., 395; 3 So. Rep. 21; Jones v. Townsend, 21 Fla., 431. Sufficiency for expense of teams by one authorized to hire them in another's work.—P. & A. R. R. Co. v. Atkinson, 20 Fla., 450. Surplusage of allegation not duplicity.—Liddon v. Hodnett, 22 Fla., 271. When unnecessary averments may be stricken out, etc.—Burritt v. Doggett, 6 Fla., 332. Venue in margin sufficient.—Temple v. Fla. etc., Co. 23 Fla., 400; 1 So. Rep. 333; McKay v. Lane, 5 Fla., 268. Sufficiency in action against a city for damage by defective sidewalks.—Orlando v. Heard, 29 Fla., 581. 11 So. Rep. 182.

Against municipality for tort.—Orlando v. Pragg, 31 Fla., 111. 12 So. Rep. 368.

Against railroads for injury to employee.—J., T. & K. W. Ry. Co. v. Galvin, 29 Fla., 636; 11 So. Rep. 231; Duval v. Hunt, 34 Fla., 85; 15 So. Rep. 876; Walsh v. Western Ry. Co. of Fla., 34 Fla., 1; 15 So. Rep. 686. For killing stock.—J., T. & K. W. Ry. Co. v. Wellman, 26 Fla., 344; 7 So. Rep. 845; Same v. Garrison, 30 Fla., 557; 11 So. Rep. 929; Same v. Harris, 33 Fla., 217; 14 So. Rep. 726; Same v. Jones, 34 Fla., 286; 15 So. Rep. 924; Same v. Price, 34 Fla., 271; 15 So. Rep. 760.

Requisites in suit v. Tel. Co. for failing to deliver a message.—South Fla. Tel. Co. v. Maloney, 34 Fla., 338; 16 So. Rep. 280.

Sufficiency in trespass constituting permanent injury.—J., T. & K. W. v. Griffin, 33 Fla., 602; 15 So. Rep. 336. Declaration need not set forth facts that are more properly matters of evidence.—Bucki v. Cone, 25 Fla., 1; 6 So. Rep. 160.

Sufficiency—Upon a cause of action assigned.—Jordan v. John Ryan Co., 35 Fla., 259; 17 So. Rep. 73. Needlessly particular in tort must be sustained by proof.—Wilkinson v. P. & A. R. R. Co., 35 Fla., 82; 17 So. Rep. 71.

Requisites upon an altered instrument.—Orlando v. Gooding, 34 Fla., 244; 15 So. Rep. 770.

On a contract of a married woman.—Crawford v. Feder, 34 Fla., 397; 16 So. Rep. 287.

Not necessary to allege presentation of note for payment.—Greely v. Whitehead, 35 Fla., 523; 12 So. Rep. 643. Repugnant and inconsistent allegations destroy each other and make a declaration demurrable.—J., T. & K. W. Ry. Co. v. Thompson, 34 Fla., 346; 16 So. Rep. 282.

Not demurrable.—Where the plaintiff is entitled on the facts alleged to nominal damages.—Borden v. W. U. Tel. Co., 32 Fla., 394; 13 So. Rep. 876; Same v. International, etc., Co., 32 Fla. 400; 13 So. Rep. 878.

REPLICATIONS AND NEW ASSIGNMENTS.

Ib., Sec. 31.

1451. (1059.) Replications in general.—A plaintiff may traverse the whole of any plea or subsequent pleading of the defendant by a general denial, or, admitting some part or parts thereof, deny all the rest, or deny any one or more allegations. And may file as many replications or subsequent pleadings to any pleading of the defendant as he may desire.

Replications should be certain.—Sealey v. Thomas, 6 Fla., 25.

1452. (1060.) Requirements of new assignment.—One new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confirmed by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from those which the pleas profess to justify, or for an excuse over and above what all the defences set up in such pleas justify, or both. Ib., Sec. 35.

1453. (1061.) Forms of replication and new assignment. The following forms of replications and new assignments shall be sufficient, and they and the like forms may be used with such modifications as may be necessary to suit the facts of the case; but nothing herein contained shall render it erroneous or irreuglar to depart from the letter of such forms, so long as the substance is expressed without prolixity. Ib., Sec. 38.

REPLICATIONS.

1. Joinder of Issue.—The plaintiff takes issue upon the defendant's first, second, etc., plea.

2. Replication to Pleas Containing New Matter.—The plaintiff, as to the second plea, says (here state the answer to the plea as in the following forms).

3. To Plea of Release.—That the alleged release is not the plaintiff's deed.

4. To Plea of Set-Off.—That the alleged set-off did not accrue within six years before this suit.

5. Molliter Imposuit, etc.—That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage, whereupon the plaintiff requested defendant to leave said land, which the defendant refused to do; and thereupon the plaintiff gently laid his hands upon the defendant, in order to remove him, doing no more than was necessary for that purpose, which is the alleged first assault by the plaintiff.

6. Right of Way.—That the occupiers of said land did not twenty years before this suit enjoy as of right and without interruption the alleged way.

NEW ASSIGNMENTS.

And the plaintiff, as to the ..... and ..... plea, further says that he sues not only for the trespass admitted, but also for, etc.

Replication to plea waives demurrable defects.—Proctor v. Hart, 5 Fla., 456. New assignment; when proper.—Wilson v. Marks, 18 Fla., 322.

A bad replication is a good answer to a bad plea.—Wade v. Doyle, 17 Fla., 522; Oxford Lake Line v. First National Bank, 40 Fla., 349; 24 So.

Rep. 480. Replication of infancy to statutes of limitations, when good.—Lanier v. Chappell, 2 Fla., 621. Showing plaintiff has no cause of action, judgment should be for defendant.—Territory v. Redding, 1 Fla., 242.

Illustration of replication defective, and a departure from the declaration.—Parkhill's admrs. v. Union Bank, 1 Fla., 110. Illustration of defective to plea of res judicata.—Sanford v. Cloud, 17 Fla., 532. Illustration of good replication to plea setting up want of title.—Ib.

ARTICLE 9.

PLEADINGS OF THE DEFENDANT.

PLEAS IN GENERAL.

Nov. 23, 1828, Sec. 26; Jan. 19,, 1838, Sec. 37.

1454. (1062.) To be sworn to.—All pleas shall be sworn to, either by the defendant or his agent or attorney. But it shall be no objection to any plea that it is contradictory to any other plea filed by the same party in the same cause.

A plea not sworn to may be stricken out upon motion.—Ropes v. Snyder, 37 Fla., 529; 20 So. Rep. 535. Pleas denying execution of instrument and failure of consideration may be plead together.—Barnes v. Scott, 29 Fla., 285; 11 So. Rep. 48.

Sufficiency of verification of plea.—State v. Anderson, 26 Fla., 240; 8 So. Rep. 1.

Purpose of oath.—State ex rel. v. County Commissioners Sumter County, 22 Fla., 1. Remedy where plea not sworn.—State ex rel. v. Maxwell, 19 Fla., 31; Hagler v. Mercer, 6 Fla., 342. Court may permit verification to be amended.—Green v. King, 17 Fla., 452.

Ibid.

1455. (1063.) As many as desired to be pleaded.—The defendant may plead as many matters of fact as he may deem necessary to his defence.

Ch. 1096, Sec. 30, Feb. 8, 1861.

1456. (1064.) Traverse of declaration.—A defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration, although it may have been included in a general traverse.

Ib., Sec. 28.

1457. (1065.) Defects of forms immaterial. — Any plea which shall be good in substance shall not be objectionable on account of its treating the declaration either as framed for a breach of contract or for a wrong.

Ib. Sec. 26.

1458. (1066.) Defences arising after action.—Any defence arising after the commencement of any action shall be

pleaded according to the fact, without any formal commencement or conclusion; and any plea which does not state whether the defence therein set up arose before or after action, shall be deemed to be a plea of matter arising before action.

1459. (1067.) Defences arising since last plea.—In cases in which a plea puis darrien continuance was before February 8, 1861, pleadable, the same defence may be pleaded with an allegation that the matter arose after the last pleading; but no such pleading shall be allowed unless accompanied by an affidavit that the matter thereof arose before the pleading of such plea, and after said continuance, unless the court shall otherwise order. Ib., Sec. 27.

In ejectment.—Spratt v. Price, 18 Fla., 289. Does not waive former pleas.—Parkhill's admr. v. Union Bank, 1 Fla., 110.

1460. (1068.) Beginning and conclusion of pleas.—No formal defence shall be required in a plea, and it shall commence as follows, or to the like effect: The defendant, by ....., his attorney (or in person), says that (here state the first defence); and every other plea shall be numbered and shall commence as follows, or to the like effect: And for second (etc.) plea, the defendant says that (here state second, etc., defence); and no formal conclusion shall be necessary to any plea or subsequent pleading. Ib., Sec. 25.

Pleas in general.—Plea tendering immaterial issue is demurrable.—Hunter v. Wilson, 21 Fla., 250. Treatment of unresponsive plea.—Huling v. Fla. Savings Bank, 19 Fla., 695. Duplicity in pleas.—Sanderson's admr. v. Thomas, 17 Fla., 468. Withdrawal of, permitted after demurrer. Should not be taken from files.—Wade v. Doyle, 17 Fla., 522. Withdrawal of improper plea permitted.—Sanford v. Cloud, 17 Fla., 532. Plea by one partner in suit against firm.—Friend v. Duryee, 17 Fla., 111. Anticipation by special plea of objection available under general issue, improper.—Dorman v. J. & A. Plank Road Co., 7 Fla., 264. Pleas reiterating defenses improper.—Ib. Plea to original declaration will be plea to amended declaration, if applicable.—Butler v. Thompson, 2 Fla., 9.

Formal defenses not necessary, but their use does not invalidate a plea.—Stafford v. Anders, 8 Fla., 34; Robinson v. Hartridge, 13 Fla., 501. Pleas in abatement lie only for matter dehors the record.—Campbell v. Chaffee, 6 Fla., 724. Lies for non-joinder of joint obligors.—Ferrall v. Brandford, 2 Fla., 508. Requisites of former action pending.—Glaser et al. v. Hacket, 37 Fla., 358; 20 So. Rep. 532. Of suit brought in wrong court.—Gibbs v. Davis, 27 Fla., 531; 8 So. Rep. 633. Pleas in bar, effect as admission of correctness of antecedent steps.—Ponder v. Mosely, 2 Fla., 207. Plea of tender must be accompanied with a profert in curia.—Forcheimer v. Holly, 14 Fla., 239; Greeley v. Whitehead, 35 Fla., 523; 17 So. Rep. 643. Which states conclusion of law demurrable.—Perry v. Woodberry, 26 Fla., 84; 7 So. Rep. 483; Mickler v. Reddick, 38 Fla., 341; 21 So. Rep. 286. Special plea stating defence covered by plea of not guilty, demurrable.—Pensacola Gas Co. v. Pebley, 25 Fla., 381; 5 So. Rep. 593. Requisite to action on foreign judgment.—Sammis v. Wightman, 31 Fla., 10; 12 So. Rep. 596. To venue, where insufficient.—Gibbs v. Davis, 27 Fla., 531; 8 So. Rep. 633.

PLEAS IN PARTICULAR CASES.

Nov. 23, 1828. Secs. 45, 46.

1461. (1069.) Pleas of set-off.—All debts or demands mutually existing between the parties at the commencement of the action, whether the same be liquidated or not, shall be proper subjects of set-off, and may be pleaded accordingly.

The defendant, at the time of the filing of the plea, shall file therewith a true copy of the subject-matter of such set-off; and upon the trial of the cause, in case the jury shall find a balance for the defendant, such defendant may claim a judgment for the same, and take out execution accordingly.

What allowed as set-off in action on contract.—Mathews v. Lindsey, 20 Fla., 962; Robinson v. L'Engle, 13 Fla., 482; Hall v. Pinney, 13 Fla., 621. Plea of set-off in suit by State. How available.—Frier v. State, 11 Fla., 300. Set-off allowable when cross action would be.—Mitchell v. McLean, 7 Fla., 329. Defendant may have judgment for excess.—Buffington v. Quackenboss, 5 Fla., 196. Plea of set-off does not prevent discontinuance by plaintiff.—Ib. Terms of discontinuance.—Ib. Nor does it prevent taking a non-suit.—Clark v. Wall, 5 Fla., 476; Birmingham Trust & Saving Co. v. Jackson Mill Co., 41 Fla., 493; 27 So. Rep. 43. Must describe the debt set-off with same particularity as a declaration.—Gonzales v. DeFuniak, etc., Co. 41 Fla., 471; 20 So. Rep. 1012; White v. Camp, 1 Fla., 94. On plea of payment burden of proof is upon defendant.—Lakeside, etc., Co. v. Campbell, 39 Fla., 523; 22 So. Rep. 878.

Ch. 1096, Sec. 29, Feb. 8, 1861.

1462. (1070.) Pleas of payment and set-off to be taken distributively.—Pleas of payment and set-off shall be taken distributively; and if issue is taken thereon, and so much thereof as shall be sufficient to answer to part of the causes of action proved shall be found true by the jury, a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered, and for the plaintiff in respect of so much of the causes of action as shall not be answered.

Nov. 23, 1828, Sec. 63.

1463. (1071.) Disclaimer in actions quare clausum fregit. In all actions of quare clausum fregit where the defendant shall disclaim in his plea any title or claim to the land in which the trespass is alleged to have been done by the declaration, and the trespass be by negligence or involuntary, the defendant shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or other offer of sufficient amends for such trespass, before the action was brought; upon which issues or upon some of them, the plaintiff shall be compelled to join issue; and if the said issue be found for the defendant, the plaintiff shall be non-suited, and no suit shall ever be maintained for the same cause of action.

Ch. 374, Sec. 1, Jan. 11, 1851.

1464. (1072.) Partial failure of consideration.—In all actions upon promissory notes and other instruments of writ-

ing wherein a total failure of consideration could, on January 11, 1851, be pleaded, partial failure of consideration may be pleaded in the same manner as pleas of total failure of consideration. The grounds of defence in such cases shall be fully pleaded.

When not good plea.—Reddick v. Mickler, 23 Fla., 335; 2 So. Rep. 698. Applied.—Stafford v. Anders, 8 Fla., 34; Ahrens v. Willis, 6 Fla., 358. Must set forth facts.—Jones v. Streeter, 8 Fla., 83. Applied to failure of consideration.—Prescott v. Johnson, 8 Fla., 391.

1465. (1073.) Denial of existence and want of consideration, etc., of certain instruments.—All bonds, notes, covenants, deeds, bills of exchange, and other instruments of writing not under seal, shall have the same force and effect (so far as the rules of pleading and evidence are concerned) as bonds and instruments under seal. Nov. 23, 1828, Secs. 24, 33, 36.

The assignment or endorsement of any such instruments of writing shall vest the assignee or endorsee with the same rights, powers and capacities as might have been possessed by the assignor or endorser. And he may bring suit thereon, and it shall not be necessary for the plaintiff in any suit upon an instrument assignable by law to set forth in the declaration the consideration upon which the instrument was given, or upon which such assignment or endorsement was made, nor to prove such consideration or the execution of such instrument, unless the same shall be impeached by the defendant under oath. An executor or administrator, however, may deny the execution or consideration aforesaid by plea not under oath.

Effect of Assignment and Endorsement.—Effect of assignment discussed.—Bellas v. Keyser, 17 Fla., 100. Assignment of bond need not be under seal.—Collins v. Williams, 1 Fla., 37. Does not enlarge common law as to parties between whom inquiry can be made.—White v. Camp, 1 Fla., 4, e. g., to include suit by endorser v. maker.—Ib. Right of action for breach of warranty of soundness not negotiable.—Kendig v. Giles, 9 Fla., 278. Effect of section upon negotiability of instruments mentioned.—Cotton v. Williams, 1 Fla., 37.

Plea and Effect Of.—Sworn plea of failure of consideration throws burden on plaintiff.—Smith v. LeVesque, 25 Fla., 464; 6 So. Rep. 263; White v. Camp, 1 Fla., 94. Plea of want of consideration as against bona fide holder of negotiable promissory note.—Hancock v. Hale, 17 Fla., 808. Section does not obviate necessity of exhibition of instrument to the jury; when exhibited, consideration presumed.—Hooker v. Johnson, 10 Fla., 198. Does not dispense with proof of assignment or endorsement.—Sinclair v. Gray, 9 Fla., 71. Section covers "want" and not "failure" of consideration.—Hagler v. Mercer, 6 Fla., 342. Effect of sworn and unsworn plea of want of consideration.—Ib. Plea must set forth facts.—Ahrens v. Willis, 6 Fla., 359. How drawn and what should contain.—White v. Camp, 1 Fla., 94. Must not be equivalent to illegality or failure of consideration.—Ormond v. Barnard, 5 Fla., 528. Effect of unsworn plea by administrator.—Knight v. Kinght, 9 Fla., 283.

March 4, 1889. Sec. 5.

1466. (1074.) Plea to suit on bond of officer.—No conviction or forfeiture shall be pleaded in bar to, or in avoidance of, any bond which may have been given by any officer for the faithful performance of the duties of his office.

Ch. 1096, Sec. 38, Feb. 8, 1861.

1467. (1075.) Forms of particular pleas.—The following forms of pleas shall be sufficient in the cases to which they shall be respectively applicable. And they and the like forms may be used with such modifications as may be necessary to suit the facts of the case, but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance be expressed without prolixity.

Effect of adoption of these forms.—Robinson v. Hartridge, 13 Fla., 501.

PLEAS IN ACTIONS ON CONTRACTS.

1. Denial of Debt.—That he never was indebted as alleged. (This plea is applicable to declaration like those numbered 1 to 12.)

Not applicable to action on covenant.—Sanford v. Cloud, 17 Fla., 532. Or to a declaration upon a special contract.—Bucki v. McKinnon, 37 Fla., 391; 20 So. Rep. 540; Bucki v. Seitz, 39 Fla., 55; 21 So. Rep. 576.

2. Denial of Contract.—That he did not promise as alleged. (This is applicable to other declarations on contracts, and not on bills and notes.)

Not applicable to common counts.—Craft v. Kendrick, 39 Fla., 90; 21 So. Rep. 803; Bacon v. Green, 36 Fla., 325; 18 So. Rep. 870. Not applicable to bills and notes.—Bemis v. McKenzie, 13 Fla., 553. But if applicable to one count should not be stricken out.—Ib.

3. Denial of Deed.—That the alleged deed is not his deed.

4. Statute of Limitations.—That the alleged cause of action did not accrue within ..... years before this suit.

5. Payment.—That before action he discharged and satisfied plaintiff's claim by payment.

This plea admits representative character of admr. suing.—Raney v. Baron, 1 Fla., 327.

6. Set-Off.—That the plaintiff, at the commencement of this suit, was, and still is, indebted to the defendant in an amount equal to the plaintiff's claim, for (here state the cause of set-off as in a declaration), which amount the defendant is willing to set-off against the plaintiff's claim.

7. Release.—That after the alleged claim accrued, and before this suit, the plaintiff, by deed, released the defendant therefrom.

PLEAS IN ACTIONS FOR WRONGS INDEPENDENT OF CONTRACT.

1. Not Guilty.—That he is not guilty.

Effect of in trover.—Robinson v. Hartridge, 13 Fla., 501. Special plea equivalent to is bad.—Pensacola Gas Co. v. Pebley, 25 Fla., 381. 5 So. Rep. 593.

2. Leave and License.—That he did what is complained of by the plaintiff's leave.

3. Self-Defence.—That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.

4. Right of Way.—That the defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof for twenty years before this suit enjoyed as of right, and without interruption, a way, on foot and with cattle, from a public highway, over the said land of the plaintiff to the said land of the defendant, and from the said land of the defendant over the said land of the plaintiff to the said highway, at all times of the year, for the more convenient occupation of the said land of the defendant, and that the alleged trespass was a use by the defendant of the said way.

1468. (1076.) Rejoinders, etc.—The defendant may deny the whole or a part of the replication or subsequent pleading of the plaintiff. Ib., Sec. 32

Defences not made in pleadings are waived.—Stewart v. Preston, 1 Fla., 10.

CHAPTER XIV.

PROCEEDINGS AFFECTING THE TRIAL OF CAUSES.

ARTICLE 1.—Proceedings before trial. Sections.....1469-1485
2.—Proceedings before or at the trial. Sections.....1486-1488
3.—Proceedings at the trial. Sections.....1489-1501

ARTICLE 1.

CHANGE OF VENUE.

1469. (1077 Revised.) All judges to grant.—Judges of all courts in this State shall have power and it shall be their duty to grant changes of venue of all cases pending before them, civil or criminal, under the circumstances and in the manner hereinafter provided by this article. Ch. 373, Sec. 1, Jan. 24, 1851.

Ib., Sec. 3, Revised.

1470. Upon disqualification of judge.—A change of venue shall be granted in all civil cases in the circuit courts and county courts where the judge of the court is disqualified from hearing and determining the same, and the parties present a petition stating such disqualification and praying for such change.

In county judges' courts and in justice of the peace courts such change may be granted on petition of one of the parties.

Nov. 23, 1828. Sec. 37.

1471. (1079 Revised.) On account of prejudice of judge or undue influence of opposite party.—Such change shall be granted if either party in any civil case, or the defendant in any criminal case, shall make application therefor on oath stating that he fears that he will not receive a fair trial in the court where the suit is pending, on account of the prejudice of the judge of said court against the applicant or in favor of the adverse party, or on account of the adverse party having an undue influence over the minds of the inhabitants of the county or justice's district in which the case is pending, or on account of applicant being so odious; such application shall fully and distinctly set forth the facts upon which the same is founded.

Sec. 1, Ch. 4137, Acts of 1893, Revised.

1472. On account of impracticability of obtaining a jury in certain courts.—Such change of venue shall be granted whenever it shall appear in any circuit court or county court in any case, civil or criminal, that it is impracticable to obtain a qualified jury for the trial of such case in the county where the same is pending.

Sec. 2, Ch. 4394, Acts of 1895.

1473. Second change of venue.—Whenever it shall appear to the judge of any court to which a case shall have been taken by a change of venue, that any of the grounds presented by law for change of venue exist in the county or justice district to which the case has been so taken, it shall be within the power and discretion of said judge to order a second change of venue of said case: Provided, That the same shall not be returned to the county from which it was originally transferred.

1474. Traverse of application.—In all applications for change in venue, except when made upon the grounds of prejudice of the pending judge, the adverse party shall have the right to traverse the allegations of the application, and the court shall hear the evidence produced by either party and shall decide the matter accordingly.

Sec. 1077, Rev. Stat. 1892; Ch. 4724, Acts of 1899, Consolidated.

1475. (1077.) To what jurisdiction venue changed.—The order granting change of venue shall remove the case to some circuit court in the next nearest circuit if the same be in a

circuit court, or some next nearest county court if the case shall be in a county court, or to the next nearest county judge when the case shall be in a county judge's court, or to the next nearest justice of the peace of same county or county judge of same county when the case is in the court of a justice of the peace. If the judge of such nearest circuit court or county court, or justice of the peace court or the county judge be disqualified, some other circuit, county or justice's district shall be selected.

1476. When in a circuit court.—If a change of venue be granted upon grounds other than the disqualification or prejudice of the judge of said court, said cause may be removed to any other county within the same circuit. Sec. 1, Ch. 4394, Acts of 1895.

1477. (1079.) No removal to residence of parties.—No change of venue shall be directed so as to have the case removed to any county or to any justice's district where either of the parties reside, unless by consent of parties.

1478. (1077.) Payment of costs.—No change of venue shall be granted in civil cases except upon condition that the applicant therefor shall pay all costs that have accrued in said cause, and shall not be effective until said costs are paid.

1479. (1078.) Transfer of papers.—Upon the removal of any case the clerk of the court (or the judge, if there be no clerk) in which such cause was pending shall transmit all papers in such court filed in said cause, and a certified copy of all entries of record in the same, including a copy of the order of transfer to the court to which said cause is transferred, which court is vested with full power to hear and determine same.

1480. (1077.) Taking testimony of witnesses.—Upon such removal, the testimony of witnesses residing in the county from which it is removed, if it be removed from the county, may be taken in the manner provided by law for taking the testimony of witnesses residing out of the county in which any suit is pending.

Transfer in circuit court in civil cases only upon request of both parties.—State ex rel. v. Walker, 25 Fla., 561; 6 So. Rep. 169. Transfer to a second circuit when judge of first to which transferred disqualified.—Swepson v. Call, 13 Fla., 337. Transfer attaches only upon filing papers in court to which transfer is made. All essentials must appear in record of transfer.—Ib. Constitutional.—Thebaut v. Canova, 11 Fla., 143. Order of transfer before service of summons, void.—Jacksonville v. Dorman, 13 Fla., 390. Order must direct transfer and name county.—Bauknight v. Sloan, 17 Fla., 281. Order of transfer must show reason for making it. Must name county to which

transfer is directed.—Smith v. Gibson, 14 Fla., 263. The affidavit for change of venue must be sworn to.—Reddick v. Joseph, 35 Fla., 65; 16 So. Rep. 781. Affidavit when insufficient.—Greeno v. Wilson, 27 Fla., 92; 8 So. Rep. 723; Johnson v. Wakulla County, 28 Fla., 720; 9 So. Rep. 690; McNealy and Roulhac v. State, 17 Fla., 198; Irvine v. State, 19 Fla., 872. The record on transfer must contain the order.—Curry v. State, 17 Fla., 683.

When order refusing will not be reversed.—Singleton v. State, 38 Fla., 297; 21 So. Rep. 21; Leslie v. State, 35 Fla., 171; 17 So. Rep. 555; Same v. Same, Ib., 182; 17 So. Rep. 558; Sheppard v. State, 36 Fla., 374; 18 So. Rep. 773.

Adams v. State, 28 Fla., 511; 10 So. Rep. 106; Williams v. Dickenson, 28 Fla., 90; 9 So. Rep. 847. When will be reversed.—Garcia v. State, 34 Fla., 311; 16 So. Rep. 223.

A hearing by a judge of another circuit under Section 1078, Rev. Stats., of 1892, is not a change of venue.—State v. Hocker, 35 Fla., 19; 16 So. Rep. 614.

SUBSTITUTION OF JUDGES.

1481. (1078.) In cases of inability and disqualification.—Whenever the judge of any court, other than the supreme and criminal courts of record, shall be unable, from absence, sickness or other cause, or shall be disqualified from interest or any other cause, to discharge any duty whatever appertaining to his office, which may be required to be performed in vacation or between terms, it shall be the duty of any other judge of a court of the same jurisdiction as the court in which the cause is pending, on the application of any party, to perform such duties, and hear and determine all such matters as may be submitted to him; and such judge may discharge such duties either in his own or any other jurdisdiction, and shall be substituted in all respects in the place instead, in the matter aforesaid, of the judge unable or disqualified to act.

Substituted judge may sign bill of exceptions.—Bowden v. Wilson, 21 Fla., 165. Section constitutional.—Swepson v. Call, 13 Fla., 337; State ex rel. Florida Publishing Company v. Hocker, judge, 35 Fla., 19; 16 So. Rep. 614; State ex rel. Hughes v. Walker, 25 Fla., 561; 6 So. Rep. 16. When order insufficient.—Roberts v. State, 27 Fla., 244; 9 So. Rep. 246; Tampa, etc., Co. v. Tampa, etc., Co., 30 Fla., 595; 11 So. Rep. 562.

TRANSFER OF CAUSES.

1482. Removal of causes from circuit to criminal court.—In all counties wherein criminal courts of record have been or may hereafter be established, the circuit courts, unless otherwise provided, may and are authorized to make orders removing all suits and causes pending in the circuit courts over which the criminal court of record has jurisdiction, to the said criminal court of record.

Sec. 1, Ch. 4128, Acts of 1893.

1483. Circuit courts to county courts.—In all counties wherein county courts have been or may hereafter be estab-

Sec. 2, Ib.

lished, the circuit courts, unless otherwise provided, may and are authorized to make orders removing all suits and causes pending in the circuit court over which said county court has jurisdiction, to the said county court.

1484. Time of order.—The orders above provided for may be made by the circuit courts, or judges thereof, at term time, or in vacation, upon the motion of the plaintiff or defendant, or their respective attorneys having the cases in charge, in the courts wherein the same properly belong. Sec. 3 Ib.

1485. How removed.—Removal of causes from circuit courts to criminal courts of record and to county courts shall be effected by the clerk of the circuit court transmitting the original papers in said cause to the court wherein the same is removed to, and certifying that the same are all the original papers in said suit or cause filed in his office. Said clerk shall also at said time transmit a certified copy of all entries of record made in the circuit court in said case. Sec. 4, Ib.

ARTICLE 2.

PROCEEDINGS BEFORE OR AT THE TRIAL.

1486. (1080.) Suit on lost instrument.—The court may order that the loss of a negotiable instrument shall not be set up in any action to recover on the same, if an indemnity be given to the satisfaction of the court, or the clerk thereof, against the claims of any other person on such instrument. Ch. 1096, Sec. 73, Feb. 8, 1861.

Applied.—Salomon v. Pioneer Corporation Co., 21 Fla., 374.

1487. (1081.) Notice to admit documents.—Either party may call upon the other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party refusing or neglecting, whatever the results of the case may be, unless at the trial the court shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give notice is, in the opinion of the court, a saving of expense. Sec. 41, Ib.

1488. (1082.) Inspection of property.—Either party shall be at liberty to apply to the court for a rule or order for the inspection by himself or by his witnesses of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute; and the costs of the said rule or order and the proceedings therein shall be in the discretion of the court. Sec. 63, Ib.

ARTICLE 3.

PROCEEDINGS AT THE TRIAL.

Sec. 51, Ib.

1489. (1083.) Adjournment of trial.—The court may at the trial of any cause where it may deem it right for the purposes of justice, order an adjournment for such time, and subject to such terms and conditions as to costs and otherwise, as it may see fit.

Nov. 23, 1828, Sec. 70.

1490. (1084.) Non-suit.—No plaintiff shall take a non-suit on trial unless he do so before the jury retire from the bar.

Nov. 21, 1829. Sec. 1.

1491. (1085.) Waiver of jury.—When both parties in an action at law agree to a trial without jury, the judgment shall be as effectual as upon verdict.

Bill of exceptions necessary to review such trial. What such bills should contain.—Bogue v. McDonald, 14 Fla., 66.

1492. (1086.) Challenge of jurors.—

Ch. 1628, Secs. 24, 33, Aug. 1, 1868.

1. Peremptory.—On the trial of any civil cause in any court, each party shall be entitled to three peremptory challenges of jurors empaneled in said cause.

When juror may be challenged.—At any time before he is sworn.—Ellis v. State, 25 Fla., 702; 6 So. Rep. 768. Peremptorily, after challenge for cause —Barber v. State, 13 Fla., 675. For cause after peremptory challenge withdrawn.—Savage v. State, 18 Fla., 909. After juror sworn, when permitted.—State v. Madoil, 12 Fla., 151; Mann v. State, 23 Fla., 610; 3 So. Rep. 207.

Ch. 3010, Acts of 1877, Sec. 7.

2. For Cause.—The court shall, on motion of each party in any suit, examine on oath any person who is called as a juror therein to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent in the cause, or is otherwise incompetent, another shall be called and placed in his stead for the trial of that cause.

And when the nature of any case, civil or criminal, requires a knowledge of reading, writing, and arithmetic, or either, to enable the juror to understand the evidence to be offered on the trial, it shall be cause of challenge if he does not possess such qualification, to be determined by the judge presiding at the trial.

Cause for challenge: Opinion.—A non-disqualifying opinion.—Andrews v. State, 21 Fla., 598; O'Connor v. State, 9 Fla., 215. Fixity of disqualiying

opinion discussed.—Montague v. State, 17 Fla., 662. What previous hearing of evidence does not disqualify.—O'Connor v. State, 9 Fla., 215. Juror sitting on former trial not challengeable after he is sworn, when.—Whitner v. Hamlin, 12 Fla., 18. Effect of knowledge that juror had formed opinion.—Irvine v. State, 19 Fla., 872. Interest.—Holder of bonds similar to those in suit, disqualified.—Jefferson Co. v. Lewis, 20 Fla., 980. Relationship.—What degree, ground of challenge.—O'Connor v. State, 9 Fla., 215; Morrison v. McKinnon, 12 Fla., 552. Waiver of such ground.—Ib.

Proof of cause.—Bias may be shown by witness.—Ellis v. State, 25 Fla., 702; 6 So. Rep. 768. Court should hear evidence against competency.—Barber v. State, 13 Fla., 675. What juror may be asked on voir dire.—State v. Madoil, 12 Fla., 151. Improper to ask as to effect of verdict on his social standing.—Savage v. State, 18 Fla., 909.

Discretion of court as to excuse.—May excuse juror not challengeable for cause.—Ellis v. State, 25 Fla., 702; 6 So. Rep. 768; Mann v. State, 23 Fla., 610; 3 So. Rep. 207. Or qualified juror.—John D. C. v. State, ex rel., 16 Fla., 554. Or disqualified juror after he is sworn.—Keech v. State, 15 Fla., 591. What opinion does not disqualify.—Olive v. State, 34 Fla., 203; 15 So. Rep. 925; English v. State, 31 Fla., 356; 12 So. Rep. 689; Brown v. State, 40 Fla., 459; 25 So. Rep. 63; Lambright v. State, 34 Fla., 564; 16 So. Rep. 582.

When an objection that a juror was summoned by a witness for State is frivolous.—Hodge v. State, 26 Fla., 11; 7 So. Rep. 593.

What opinion of circumstantial evidence disqualified in trial of capital offense.—Holland v. State, 39 Fla., 178; 22 So. Rep. 298.

1493. Oral examination by parties or attorneys.—In the trial of any cause, civil or criminal, before a jury in any court of this State, the respective parties to said cause, either by themselves or through their attorneys, shall have the right to orally examine jurors upon their voir dire.

Sec. 1, Ch. 4718 Acts of 1899.

Questions improper on voir dire.—Jenkins v. State, 31 Fla., 196; 12 So. Rep. 677; Lambright v. State, 34 Fla., 564; 16 So. Rep. 582; Hubbard v. State, 37 Fla., 156; 20 So. Rep. 235; Roberson v. State, 40 Fla., 509; 24 So. Rep. 474; Brown v. State, 40 Fla., 459; 25 So. Rep. 63.

Questions proper on voir dire.—Pruden v. State, 27 Fla., 370; 8 So. Rep. 837.

Court may examine.—Jones v. State, 35 Fla., 289; 17 So. Rep. 284.

1494. Six jurors in civil causes.—In the trial of all civil causes in any and all of the several courts of this State, where a jury is or may be required or impanelled, a jury of six qualified jurors shall be sufficient and requisite for the trial and disposition of said cause.

Sec. 1, Ch. 4717, Acts of 1899.

1495. (1087.) View of premises by the jury.—The jury may, in any case, upon motion of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that view is necessary to a just decision; but the party making the motion shall advance a sum sufficient to defray the expenses of the jury and

Ch. 1628, Sec. 28, Aug. 1, 1868.

the officer who attends them in taking the view, which expense shall afterward be taxed like other legal costs, if the party who advanced them shall prevail in the suit.

Necessity for, is in sound discretion of court below.—Coker v. Merritt, 16 Fla., 416.

CHARGE TO THE JURY IN CIVIL CASES.

Ch. 2096, Sec. 1, March 2, 1877.

1496. (1088.) Duty of judge to charge jury.—Upon the trial of all cases at law in the several courts of this State, the judge presiding on such trial shall charge the jury only upon the law of the case; that is, upon some point or points of law arising in the trial of said cause.

If, however, upon the conclusion of the argument of counsel in any civil case, after all the evidence shall have been submitted, it be apparent to the judge of the circuit court, or county court, that no evidence has been submitted upon which the jury could lawfully find a verdict for one party, the judge may direct the jury to find a verdict for the opposite party.

Error to direct jury to find verdict for one of the parties if there is any evidence for the other.—C. B. Rogers & Co. v. Meinhard, 37 Fla., 480; 19 So. Rep. 878; Williams v. La Penotiere, 32 Fla., 491; 14 So. Rep. 157; F. C. & P. R. R. Co. v. Williams, 37 Fla., 406; 29 So. Rep. 558.

A charge not assuming facts.—Fla. Ry. & Navigation Co. v. Webster, 25 Fla., 394; 5 So. Rep. 714. Erroneous charge upon facts.—E. N. E. v. State, ex rel., Ib., 268; 6 So. Rep. 58; Baker v. Chatfield, 23 Fla., 540; 2 So. Rep. 822. Assuming truth of material fact in dispute.—Ashmead v. Wilson, 22 Fla., 255; L. & N. R. R. Co. v. Yieniestra, 21 Fla., 700; Ferguson v. Porter, 3 Fla., 27. Assumption of conclusiveness of testimony of witness erroneous.—Doggett v. Willey, 6 Fla., 482. A charge on facts erroneous.—Doggett v. Jordan, 2 Fla., 541. When reasonable notice is to be decided by court.—Whitaker v. Morrison, 1 Fla., 25. Charge should not assume any controverted fact to be true.—F. C. & P. R. R. Co. v. Foxworth, 41 Fla., 1; 25 So. Rep. 338.

Must not invade the province of the jury or state fact.—Price v. Carter, 39 Fla., 362; 22 So. Rep. 715; E. N. E. v. State, 25 Fla., 268; 6 So. Rep. 58; Baker v. Chatfield, 23 Fla., 540; 2 So. Rep. 822; Newberry v. State, 26 Fla., 334; 8 So. Rep. 445; Hanover F. Ins. Co. v. Lewis, 28 Fla., 209; 10 So. Rep. 297. Must not instruct jury to give more weight to portions of the evidence.—Williams v. La Penotiere, 32 Fla., 491; 14 So. Rep. 157; Wheeler v. Baars, 33 Fla., 696; 15 So. Rep. 584; Williams v. Dickinson, 28 Fla., 90; 9 So. Rep. 847. Must not read and adopt the facts of any reported case.—Herman v. Williams, 36 Fla., 136; 18 So. Rep. 351.

Must be based upon some state of facts shown by the evidence.—Mayer v. Wilkins, 37 Fla., 244; 19 So. Rep. 632; J. T. & K. W. Ry. Co. v. P. L., etc., Co., 27 Fla., 58; 9 So. Rep. 66; Lewton v Hower, 35 Fla., 58; 16 So. Rep. 616.

Should not go beyond the issues.—S. F. & W. Ry. Co. v. Friedman, 39 Fla., 196; 22 So. Rep. 658; J., T. & K. W. Ry. v. Galvin, 29 Fla., 636; 11 So. Rep. 169.

Is erroneous if it submits the case to the jury upon a state of facts upon

which a verdict would not be authorized.—Bacon v. Green, 36 Fla., 325; 18 So. Rep. 870; Tischler v. Kurtz, 35 Fla., 323; 17 So. Rep. 661.

A charge which misleads jury cause for reversal.—Meinhardt v. Mode, 25 Fla., 181; 5 So. Rep. 672.

Misleading instruction should be refused.—F. R. & N. Ry. Co. v. Webster, 25 Fla., 394; 5 So. Rep. 714.

A defective charge may be cured.—Montgomery v. Knox, 23 Fla., 595; 3 So. Rep. 211; Keech v. Enriquez, 28 Fla., 597; 10 So. Rep. 91.

1497. (1089.) When charge to be in writing.—Every charge to a jury shall be oral, except when, in the circuit, criminal courts of record or county court, either party, or his attorney, shall request in writing before the evidence is closed that it be in writing, when the judge shall commit it to writing. Ib., as amended by Ch. 4388, Acts of 1895.

When delivered it shall be filed in the case and become a part of the record.

Judge need not charge at all unless requested.—Lacy v. State, 11 Fla., 295. Direction as to conduct of jury is not a charge.—Duggan v. State, 9 Fla., 516.

1498. (1090.) Instructions to juries.—If either of the parties, or their attorneys, present to the judge instructions in writing on any point of law arising on the trial, it shall be the duty of the judge to declare in writing to the jury his ruling thereupon as presented, and pronounce the same to the jury as given or refused. Ch. 2096, Acts of 1877, Sec. 1.

Presumption that statute has been followed.—Carter v. State, 22 Fla., 552. Refusal of judge to follow this section is error.—Keitt v. Spencer, 19 Fla., 748; Fridenberg v. Robinson, 14 Fla., 130; Baker v. State, 17 Fla., 406. Such refusal pronounced error in case where there was no bill of exceptions.—Keitt v. Spencer, 19 Fla., 748. Evidence of compliance with section.—Jones v. State, 18 Fla., 889. Instructions should be written out by counsel.—Irvine v. State, 19 Fla., 872. Judge need not read to jury instructions refused.—Stewart v. Mills, 18 Fla., 57; Sherman v. State, 17 Fla., 888. Counsel should have time to prepare instructions.—Dixon v. State, 13 Fla., 636. Instructions may be taken to jury room if whole charge and instructions are taken.—Ib.

It is not error to refuse an instruction already given.—Higgins v. Nathan v. State, 42 Fla., 573; 29 So. Rep. 410; J., T. & K. W. Ry. Co. v. P. L. Co., 27 Fla., 1; 9 So. Rep. 661. But the charge given must cover the whole ground.—Demens v. LeMoyne, 26 Fla., 323; 8 So. Rep. 442.

1499. (1091.) To be signed and filed.—Said instructions, as well those given as those denied, shall be signed by the said judge, and be by him filed in the case immediately after delivery or refusal, and form a part of the record in the case. Ib., Sec. 3.

Waiver of failure to sign.—Jones v. Greeley, 25 Fla., 629. 6 So. Rep. 448. Evidence of signing.—Carter v. State, 22 Fla., 552; So. Ex. Co. v. Van Meter, 17 Fla., 783.

1500. (1092.) Portion of charge embodied in motion for new trial considered as excepted to.—Either party, after verdict rendered, may embody in a motion for a new trial any portion of the charge of the court which he may deem erroneous, which shall be taken as an exception to said charge.

General exceptions to several instructions overruled if one good.—Baker v. Chatfield, 23 Fla., 540; 2 So. Rep. 322; Heron v. State, 22 Fla., 86; Dupuis v. Thompson, 16 Fla., 69; Burroughs v. State, 17 Fla., 643. This section does not change this rule.—Carter v. State, 20 Fla., 754. General exception to whole charge bad unless whole charge erroneous.—Jenkins v. Lykes, 10 Fla., 148; Irvine v. State, 19 Fla., 872; Burroughs v. State, 17 Fla., 643; John D. C. v. State, 16 Fla., 554; May v. Gamble, 14 Fla., 467. Exception is necessary to review charge.—Wilson v. Marks, 18 Fla., 322; Burroughs v. State, 17 Fla., 643. Or error in refusing or giving instructions.—So. Ex. Co., v. Van Meter, 17 Fla., 783. Applied.—Glover v. State, 22 Fla., 493. Error in charge not considered by Supreme Court unless excepted to.—Williams v. State, 32 Fla., 251; 13 So. Rep. 229; McSwain v. Howell, 29 Fla., 248; 10 So. Rep. 588; Jones v. Greeley, 25 Fla., 629; 6 So. Rep. 448.

When general exception to charge not sustained.—Post v. Bird, 28 Fla., 1; 9 So. Rep. 888; Baker v. Chatfield, 23 Fla., 540; 2 So. Rep. 822.

Charge not erroneous if in favor of party questioning it.—Rosenheim v. Morrow, 37 Fla., 183; 20 So. Rep. 243.

Court has the right to modify charge requested.—Bacon v. Green, 36 Fla., 325; 18 So. Rep. 866.

Ch. 1628, Sec. 27, Aug. 1, 1868.

1501. (1093.) Sending jury back.—When a jury, after due and thorough deliberation upon any cause, shall return into court without having agreed on a verdict, the court may explain to them anew the law applicable to the case, and may send them out again for further deliberation; but if they shall return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they shall ask from the court some further explanation of the law.

CHAPTER XV.

OF WITNESSES AND EVIDENCE.

ARTICLE 1.—Witnesses. Sections.....1502-1513
2.—Evidence, other than depositions. Sections.....1514-1540
3.—Depositions. Sections.....1541-1569

ARTICLE 1.

WITNESSES.

Their competency. Sections.....1502-1505
Their credibility. Section.....1506
Procurement of attendance. Sections.....1507-1509
Their impeachment. Sections.....1510-1511
Their compensation. Sections.....1512-1513

COMPETENCY OF WITNESSES.

1502. As affected by marriage.—In the trial of civil actions in this State, neither the husband nor the wife shall be excluded as witnesses, where either the said husband or wife is an interested party to the suit pending. Sec. 1 Ch. 4029, Acts of 1891.

Confidential communications protected.—Mercer v. State, 40 Fla., p. 216; 24 So. Rep. 154.

1503. Atheists may testify.—Atheists, agnostics, and all persons who do not believe in the doctrine of future rewards and punishments, shall be permitted to testify in any of the courts in this State. They may solemnly affirm instead of taking an oath, and false testifying by said persons shall be perjury, as in case of other witnesses, and shall be punished as now prescribed by law. Ch. 4036, Acts of 1891.

1504. (1096.) Perjury disqualifies.—A conviction of perjury shall make incompetent any person to testify in any court in this State, even if such person has been pardoned. Sec. 1, Ch. 4966, Acts of 1901, and Sec. 1096, R. S., 1892.

In other cases pardon restores competency.—Singleton v. State, 38 Fla., 297; 21 So. Rep. 21.

1505. (1095.) As affected by interest.—No person, in any court, or before any officer acting judicially, shall be excluded from testifying as a witness by reason of his interest in the event of the action or proceeding, or because he is a party thereto: Provided, however, That no party to such action or proceeding, nor any person interested in the event thereof, nor any person from, through or under whom any such party, or interested person, derives any interest or title, by assignment or otherwise, shall be examined as a witness in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic, against the executor, or administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person, or the assignee or committee of such insane person or lunatic; but this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, survivor or committeeman shall be examined on his own behalf, or as to which the testimony of such deceased person or lunatic shall be given in evidence. Ch. 1983, Sec. 1, Feb. 14, 1874.

What Testimony Proviso Excludes.—"Transactions or communications" defined.—Holliday v. McKinne, 22 Fla., 153. In suit against assignee of deceased person.—Harris vs. Bank, ib., 501. Against representative of de-

ceased.—Ley v. Edwards, 21 Fla., 333. Effect of this proviso.—Belote v. O'Brien's administrator, 20 Fla., 126. In suit of survivor against representative of deceased partner.—Eppinger v. Canepa, 20 Fla., 262. Proviso applied even where no objection to testimony made below.—Stewart v. Stewart, 19 gagee.—Tunno v. Roberts, 16 Fla., 738. Interest defined, mode of and practice in proving.—Croom v. Noll, 6 Fla., 52; Edwards v. Rives, 35 Fla., 89; 17 So. Rep. 416.

What Testimony Proviso Does Not Exclude.—Suppletory oath to book of account.—Robinson v. Dibble's admr., 17 Fla., 45; Dean v. King's ext 20 Fla., 533. Testimony as to the performance and value of services rendered by party to deceased.—Ib. Certain testimony of party not forbidden.—Raulerson v. Rockner's admr., 17 Fla., 809; Lewis v. McGinnis, 30 Fla., 419; 12 So. Rep. 19; Adams v. Board of Trustees, 37 Fla., 266; 20 So. Rep. 266.

Relatives of parties in interest not disqualified.—Haworth v. Norris, 28 Fla., 763; 10 So. Rep. 18. Executor and legatee can, in a contest as to execution of a will.—Hayes v. Ernst, 32 Fla., 18; 13 So. Rep. 451.

CREDIBILITY OF WITNESSES.

Secs. 1096 and 1097, Rev. Stat. 1892, as amended by Sec. 1, Ch. 4966, Acts of 1901.

1506. (1096 and 1097.) As affected by crime.—No person shall be disqualified to testify as a witness in any court of this State by reason of conviction of any crime except perjury, but his testimony shall be received in evidence under the rules, as any other testimony: Provided, however, Evidence of such conviction may be given to affect the credibility of the said witness, and that such conviction may be proved by questioning the proposed witness, or if he deny it, by producing a record of his conviction. Testimony of the general reputation of said witness may likewise be given in evidence to affect his credibility.

PROCUREMENT OF ATTENDANCE OF WITNESSES.

Nov. 23, 1828. Sec. 38, modified by Ch. 4397, Acts of 1895.

1507. (1098.) Issuance of subpoena ad. test.—When the attendance of any person shall be required as a witness in any court, in any cause pending therein, it shall be the duty of the clerk of the said court, or the court if it has no clerk, on application, to issue a writ of subpoena, directed to the person whose attendance shall be required, when such person resides in the State of Florida. Except in justice of the peace courts, such witness must reside within twenty-five miles of the place where the court sits.

Nov. 23, 1828, Sec. 38, as amended by Sec. 1, Ch. 4387, Acts of 1895.

1508. (1099.) Failure of witnesses to attend.—If a witness in any civil cause has been duly subpoenaed, and the compensation to which he would be entitled for mileage to and from the court, and per diem for one day, has been paid to such witness, or the same is deposited with the sheriff or other officer summoning such witness, and he shall fail to appear, it shall be the duty of the court, on motion, to order

an attachment against him, returnable at such time as the court may direct; and upon the return of such attachment the court may fine such witness in any sum not exceeding one hundred dollars, unless he shall make sufficient excuse for such non-attendance, to be judged by the court; and such witness shall also be subject to the action of the party at whose suit he has been subpoenaed, for any damage sustained by reason of his non-attendance.

1509. (1100.) Length of attendance.—It shall be the duty of every duly subpoenaed witness to attend from day to day and from term to term of the court to which he is subpoenaed, until the cause in which he has been subpoenaed is tried or otherwise disposed of, unless he shall be sooner discharged from further service: Provided, He is paid in advance for such attendance, or deposit is made as provided in the preceding section.

Ch. 622, Sec. 1, Jan. 13, 1855, amended by Sec. 2, Ch. 4387, Acts of 1895.

IMPEACHMENT OF WITNESSES.

1510. (1101.) By party producing.—A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness prove adverse, contradict him by other evidence, or prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.

Ch. 1096, Sec. 52, Feb. 8 1861.

Applied.—Montgomery v. Knox, 23 Fla., 505; 3 So. Rep. 211; Mercer & Mobley v. State, 41 Fla., p. 498; 26 So. Rep. 317 and 732.

1511. (1102.) By adverse party.—If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to witness, and he must be asked whether or not he made such statements.

Ib., Sec. 53.

What knowledge impeaching witness must have; practice in impeaching.—Robinson v. State, 16 Fla., 835. Can be impeached by showing opium habit, when.—Eldridge v. State, 27 Fla., 162; 7 So. Rep. 448. By showing inconsistent statements.—Stewart v. State, 42 Fla., 591; 28 So. Rep. 815.

By Former Testimony.—If in writing must be shown to witness in crim-

inal case.—Simmons vs. State, 32 Fla., 387; 13 So. Rep. 896. By former affidavit.—Leslie v. State, 35 Fla., 171; 17 So. Rep. 555.

Circumstances must be brought to his attention.—Montgomery v. Knox, 23 Fla., 595; 3 So. Rep. 211.

Hostility and animus of witness may be shown.—Eldridge v. State, 27 Fla., 162; 9 So. Rep. 448. But not particular acts.—Robinson v. State, 40 Fla., 509; 24 So. Rep. 474; Bryan v. State, 41 Fla., 643; 26 So. Rep. 1022.

Practice on impeachment by showing general reputation.—Nelson v. State, 32 Fla., 244; 13 So. Rep. 361; Wood v. State 31 Fla., 221; 12 So. Rep. 539.

Attempt to suborn witnesses may be shown.—Williams v. Dickinson, 28 Fla., 90; 9 So. Rep. 847.

One's own witnesses cannot be impeached unless he proves adverse.—Adams v. Sate, 34 Fla., 185; 15 So. Rep. 905; Williams v. Dickinson, supra; Mercer v. State, 41 Fla., 279; 26 So. Rep. 317.

Witness, when may be contradicted by medical works.—Eggert v. State, 40 Fla., 527; 25 So. Rep. 144. May be interrogated as to having been convicted of criminal offence.—Roberson v. State, supra; Squires v. State, 42 Fla., 251; 27 So. Rep. 864.

Ch. 3106, Sec. 5, Mch. 7, 1879, amended by Ch. 4387, Acts of 1895.

1512. (1103.) Pay of witnesses.—Witnesses in civil causes in the circuit court and county courts, and witnesses summoned before any referee, arbitrator or master in chancery, shall receive for each day's attendance one dollar, and also five cents per mile for actual distance traveled to and from the court; in courts of county judges and justices of the peace, fifty cents per day, and the same mileage as in the circuit court.

Nov. 11, 1828, Sec. 41, amended by Sec. 4, Ch. 4387, Acts of 1895.

1513. (1104.) Manner of obtaining compensation.—Such compensation shall be paid to the witness by the party in whose behalf he is summoned, and the prevailing party may tax the same as costs against his adversary; but no person shall be compelled to attend court as a witness in any civil cause unless the party in whose behalf he is summoned shall first pay him the amount of compensation to which he would be entitled for mileage and per diem for one day, or the same is deposited with the executive officer of said court, and he shall not be compelled to attend thereafter unless paid in advance. But if any witness should serve without payment in advance, at the completion of his services he may exhibit his account for compensation, and when the same shall have been taxed and approved by the court wherein the services have been rendered such bill shall have the force and effect of judgment and execution against the party in whose behalf the witness was summoned, and be collected by the sheriff as in other cases of execution. Any witness who shall charge and receive more than is really due shall forfeit and pay to the party injured four times the amount so unjustly claimed; and if he shall willfully make out his account

for more than is lawfully due he shall forfeit his compensation.

ARTICLE 2.

OF EVIDENCE OTHER THAN DEPOSITIONS.

Of laws. Sections.....1514-1517
Of record of courts. Sections.....1518-1519
Of records of public offices in general. Sections.....1520-1521
Final judgments and decrees of courts. Section..... 1522
Former bill of exceptions. Section..... 1523
Certificates from various State officials. Sections.....1524-1527
Rules of evidence on fire policies. Section..... 1528
Abstracts of title as evidence. Sections.....1529-1532
Producing books. Section..... 1533
Propounding interrogatories. Sections.....1534-1535
In particular cases. Sections.....1536-1540

OF EVIDENCE OF LAWS.

1514. (1105.) Laws of this State.—Printed copies of all statutes, acts and resolutions of the Legislature of this State, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence of such statutes, acts and resolutions, in all courts and on all occasions whatsoever. And such copies of private acts shall be so admitted without being specially pleaded. Nov. 21, 1828, Sec. 6; Mch. 15, 1843 Sec. 27.

1515. (1106.) Written laws of the United States and of the several States.—Printed copies of the statute laws of the United States, and of any of the several States and Territories thereof, if purporting to be published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts and on all other occasions in this State as prima facie evidence of such laws. Ib., Sec. 28.

Courts take judicial notice of legislative journals.—State ex rel. v. Hocker, 36 Fla., 358; 18 So. Rep. 767.

1516. (1107.) The unwritten law of the United States and of the several States, etc.—The unwritten or common law of the United States, or any of the States or Territories thereof, may be proved as facts by parol evidence; and the Ib., Sec. 29.

books of reports in cases adjudged in their courts may also be admitted as evidence of such law.

Laws of other States must be proved as other facts.—Tuten v. Gazan, 18 Fla., 751; Sammis v. Wightman, 31 Fla., 10; 12 So. Rep. 526; Duke v. Taylor, 37 Fla., 64; 19 So. Rep. 172; Summer v. Mitchell, 29 Fla., 179; 10 So. Rep. 562. When printed copies of such laws admissible.—Rogero v. Zappee, 33 Fla., 625; 15 So. Rep. 326.

Ib., Sec. 30.

1517. (1108.) Foreign laws.—The existence and the tenor or effect of all foreign laws may be proven as facts by parol evidence; but if it shall appear that the law in question is contained in a written statute or code, the court may, in its discretion, reject any evidence of such law which is not accompanied by a copy of such code or statute.

Ib., Sec. 26.

1518. (1109.) Of records of courts.—Copies of the records and judicial proceedings of any court in this State, or of another State or Territory, or of the United States, shall be admissible in evidence in all cases in this State, when authenticated by the attestation of the officer having charge of the records of such court, with the seal of such court annexed. And the recital by the person attesting that he has charge of such records shall be prima facie evidence that he has such charge.

Irregular, defective or void records of courts of other States not admitted in evidence.—Porter v. Bevill, 2 Fla., 528. Nor judgments of other States against defendant not shown to have been served personally or by legal publication.—Ib. What is record of judgment.—Ashmead v. Wilson, 22 Fla., 255; Walls v. Wendel, 20 Fla., 86; Stark v. Billings, 15 Fla., 318; Donald v. McKinnon, 17 Fla., 746. Existence and effect of not proveable by oral testimony, when.—Bellamy v. Hawkins, 17 Fla., 750.

Nov. 20, 1828, Sec. 12.

1519. (1110.) Copies of wills and probates.—Copies of all wills and letters testamentary or of administration, heretofore recorded in any public office of record in this State, when duly certified by the keeper of said records, shall be received as evidence in all the courts of record in this State; and the probate of wills granted in any of the United States or Territories thereof, or in any foreign state, duly authenticated and certified according to the laws of the State or Territory, or of the laws of the foreign country or state where such probate may have been granted, shall likewise be received in evidence in all the courts of record in this State.

Ch. 81, Sec. 1, Dec. 21, 1846.

1520. (1111.) Of evidence of records of public officers in general.—In all cases where any record, pleading, document, deed, conveyance, paper or instrument of writing is, or may be, required or authorized to be made or filed or recorded in any public office of this State or of any county thereof, a

copy thereof, duly certified under the hand and seal of office (if there be seal of office, and if there be no seal of office, then under the private seal of the officer having the custody or control of the same), to be a true and correct copy of the original, on file or of record in his office, shall in all cases and in all courts and places be admitted and received in evidence with the like force and effect as the original thereof might be. Nothing herein contained shall be so construed as to prevent any court or judge before whom such copies may be offered in evidence from requiring the party offering the same to produce or account for the original of such copy, if the same shall be deemed necessary or proper for the attainment of justice.

Some such records admissible even without statute.—Bell v. Kendrick, 25 Fla., 778; 6 So. Rep. 868; Magruder v. Roe, 13 Fla.. 602. Record of deed must have been upon due evidence of execution.—Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871. Applied to records of papers in office of Secretary of State.—Tuten v. Gazan, 18 Fla., 751. Extracts from records not evidence.—Bellamy v. Hawkins, 17 Fla., 750. Even though certified to contain all material matters.—Ib. American state papers evidence.—Magruder v. Roe, 13 Fla., 602. When record of board of county commissioners is admissible.—Johnson v. Wakulla County, 28 Fla., 720; 9 So. Rep. 690. Official registers of public officers admissible.—Bell v. Kendrick, 25 Fla., 778; 6 So. Rep. 868.

1521. Certain tax deeds prima facie evidence of title. All tax deeds issued under and pursuant to the provisions and in the form prescribed in and by an act of the Legislature of the State of Florida, entitled "An Act to provide for the issue, custody, redemption, sale and transfer of tax sale certificates, and the issue of tax deeds, and prescribing the duties of certain officers in connection therewith," shall be and are hereby declared to be prima facie evidence of the regularity of the proceedings from the valuation of the land described in such deeds respectively, by the assessors, to the date of the deed or deeds inclusive, and shall be so received in evidence in any and all the courts of this State, without regard to date of execution.

Sec. 1, Ch. 5450, Acts of 1903.

Deed must be recorded upon proper proof to make certified copy admissible.—Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871; Parker v. Cleveland, 37 Fla., 39; 19 So. Rep. 344.

For sheriff's deed valid judgment and execution must be shown.—McGehee v. Wilkins, 31 Fla., 83; 12 So. Rep. 228.

Ancient papers.—Sullivan v. Richardson, 33 Fla., 1; 14 So. Rep. 692.

Map admissible.—Fla., etc., Ry. Co. v. Parsons, 33 Fla., 631; 15 So. Rep. 338.

A certificate of clerk of circuit court of a fact inadmissible.—Parker v. Cleveland, 37 Fla., 39; 19 So. Rep. 344.

Exemplification of record of a patent admissible.—Ropes v. Kemp, 38 Fla., 233; 20 So. Rep. 992.

Sec. 1, Ch. 4723, Acts of 1899.

1522. Final judgments and decrees of circuit court.—All final judgments and decrees, heretofore or hereafter rendered and entered in the circuit courts of this State, and certified copies thereof, shall be admissible as prima facie evidence in the several courts of this State of the entry and validity of such judgments and decrees.

Sec. 1, Ch. 4135, Acts of 1893.

1523. Use of former bills of exceptions.—In case any judgment at law rendered by a circuit court shall be reversed and a new trial awarded, and it be made to appear to the satisfaction of the court that any evidence used at the former trial, whether oral or written, and incorporated in the bill of exceptions, cannot be had, then the bill of exceptions taken at the previous trials may be used as evidence upon any subsequent trial of the case, as to any matter in issue at the former trial.

Ch. 2063 Sec. 1,, Feb. 20, 1875.

1524. (1112.) Certificate of Commissioner of Agriculture.—The certificate of the Commissioner of Agriculture, under his official seal, with respect to the ownership by the State, or by the school, seminary or Internal Improvement Fund, of any lands in this State, shall be prima facie evidence of the facts therein certified.

Applied to certificate of patenting by United States to State.—Groover v. Coffee, 19 Fla., 61.

Ch. 3250, Sec. 1, Mch. 7, 1881.

1525. (1113.) Certificates of State officers.—The certificate of any State officer, under his seal of office, as to any official act occurring in the course of the official business of the office in which he presides, shall be prima facie evidence of such fact.

Ch. 3127, Sec. 1, Feb. 20, 1879; Ch. 3877, Secs. 1 and 2, May 2, 1889.

1526. (1114.) Effect of seal of Commissioner of Agriculture.—The impression of the seal of the Commissioner of Agriculture upon any deed, agreement or contract, purporting to have been made by the Trustees of the Internal Improvement Fund, or by the members of the Board of Education, or by the Commissioner of Agriculture, shall entitle the same to be received in evidence in all courts and in all proceedings in this State.

Applied.—Bell v. Kendricks, 25 Fla., 778; 6 So. Rep. 868. When not evidence.—Groover v. Coffee, 19 Fla., 61.

Exemplification of United States land patent and of records of United States general land office.—Liddon v. Hodnett, 22 Fla., 442. Seal of another State to document issued by its executive makes it evidence.—Groover v Coffee, 19 Fla., 61.

Ch. 4696, Acts of 1899, Sec. 4.

1527. Certificate of health officer in certain cases.—Every owner, agent or lessee of any building or buildings used for

the purpose of providing board and lodgings for the entertainment of guests, containing ten rooms or more, who shall have obtained and posted a certificate as provided by law, may present the same as evidence in his defence in any suit in any of the courts in this State in which damages are claimed for injuries from alleged unsanitary conditions of said buildings and premises.

1528. Rule of evidence in suits on fire policies for loss or damage to building.—In all suits or proceedings brought upon policies of insurance on buildings against loss or damage by fire, hereafter issued or renewed, the insurer shall not be permitted to deny that the property insured was worth, at the time of insuring it by the policy, the full sum insured therein on such property. Sec. 2, Ch. 4677, Acts of 1899.

(Rule of evidence.—In killing stock by railroad: See Section 2878.)

(Justice of the Peace.—Docket as evidence: See Section 2072.)

(Records, etc., of Adjutant-General: See Section 735.)

(Certificate of Comptroller: See Section 121.)

(Certificates of Secretary of State: See Section 76.)

(Certificate State Chemist in fertilizer cases: See Section 1271.)

(Certificate of Pilot Commissioners: See Section 1309.)

(Inventories and appraisements of estates: See Section 2396.)

(Physical examination in personal injury cases: See Section 3151.)

WHERE RECORDS HAVE BEEN BURNED.

1529. Abstract of title as evidence. — Whenever in the trial of any suit, or in any proceeding in any court of this State it shall be made to appear that the original of any deed or other instrument of writing, or of any record of any court relating to any land, the title thereof or any interest therein being in controversy in such suit or proceeding, is lost or destroyed, or not within the power of the party to produce the same, and that the record thereof has been heretofore destroyed by fire, and that no certified copy of such record is in the possession or control of such party, it shall be lawful for such party, and the court shall receive as evidence, any abstract of title, or letter press copy thereof made in the ordinary course of business prior to such loss or destruction; and it shall also be lawful for any such party to Sec. 1, Ch. 4951 Acts of 1901.

offer, and the court shall receive as evidence, any copy, extract or minutes from such destroyed records, or from the original thereof, which were at the date of such destruction in the possession of any person or persons then engaged in the business of making abstracts of titles for others for hire.

Ibid.

1530. Sworn copy, evidence.—A sworn copy of any writing admissible under the above section made by the person or persons having possession of such writing, shall be admissible in evidence: Provided, The party desiring to use such sworn copy, as aforesaid, shall have given the opposite party a reasonable opportunity to verify the correctness of such copy: And Provided, That no abstract of title or letter press copy thereof, extract or minutes or copy made admissible in evidence by this section, shall be so admitted by virtue hereof unless a copy thereof shall have been served on the opposite party, or his attorney or counsel, at least ten days before the same is offered in evidence. Nothing herein shall be construed to prevent the impeachment of such evidence, or its exclusion by the court for good and sufficient cause.

Sec. 4, Ib.

1531. Effect of abstracts received in evidence.—In all cases in which any destroyed abstracts, copies, minutes, extracts, maps or plats, or copies thereof, purchased and placed in the clerk's office, as provided by law, or which are made admissible in evidence under any of the provisions of this Revision, whether purchased or placed in such office or not, shall be received in evidence under this act, all deeds or other instruments of writing appearing thereby to have been executed by any person or persons, or in which they appear to have joined, shall (except as against any person or persons in actual possession of the land or lot described therein at the time of the destruction of the record of such county, claiming title thereto, otherwise than under sale for taxes or special assessments) be presumed to have been executed and acknowledged according to law; and all sales under powers, and all judgments, decrees and legal proceedings, and all sales thereunder (sale for taxes and assessments, and judgments and proceedings for the enforcement of taxes and assessments, excepted) shall be presumed to be regular and correct, except as against the person or persons in this section above mentioned and excepted.

Sec. 5, Ib.

1532. Suits concerning land, etc.—In all suits or proceedings concerning any land, or any estate, interest or right in, or any lien or incumbrance upon the same, when it shall be made to appear that the original of any deed, conveyance, map, plat or other written or record evidence

has been lost or destroyed, or is not in the power, custody or control of the party wishing to use it on the trial to produce same, and the record thereof has been heretofore destroyed by fire, the court shall receive all such evidence as may have a bearing on the case to establish the execution or contents of any deed, conveyance, map, plat, record, or other written evidence so lost or destroyed: Provided, That the testimony of the parties themselves shall be received only in such cases, and subject to all the qualifications in respect to such testimony as now provided by law: And Provided further, That any writing in the hands of any person or persons, which may become admissible in evidence under the provisions of this section, or any part of this act, shall be rejected and not admitted as evidence, unless the same appear upon the face thereof without erasure, blemish, alteration, interlineation or interpolation in any material part, unless the same shall be explained to the satisfaction of the court, and appear fairly and honestly made in the ordinary course of business. (See Sections 2511 and 2512.)

(Penalty for changing records: See Section 3362.)

OF DISCOVERY FROM OPPONENT.

1533. (1115.) By production of books, etc.—The courts of this State, may, on the trial of causes cognizable before them respectively, upon ten days' notice to the opposite party or his attorney, require the party notified as aforesaid to produce books and other writings in his possession, power or custody, which shall contain evidence pertinent to the issue; and if he shall fail to comply with such order, or to satisfy the court why the same is not complied with, it shall be lawful for the court, if the party so refusing be plaintiff, to give judgment for the defendant, as in case of non-suit; and if defendant, to give judgment against him by default. The party requiring the production of books or papers as aforesaid shall, in all cases, satisfy the court of their materiality in the cause therein pending. Sec. 1115, Rev. Stat. 1892.

When may require exhibit of books called for.—Sinclair v. Gray, 9 Fla., 71. Proof of materiality required before judgment for non-production.—Ib. Practice when book or paper is only a link in evidence.—Ib. Rule for requiring production.—Neafie v. Miller & Henderson, 37 Fla., p. 173; 20 So. Rep. 252.

1534. (1116.) By propounding interrogatories. — In all causes in any of the courts of this State the plaintiff may at any time, after filing declaration, or the defendant, after filing plea, deliver to the opposite party, or his attorney, interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or in case of Sec. 1116, Ib.

a body corporate, any of the officers of such body corporate, within ten days, to file in the court in which the cause is pending, written answers under oath to such interrogatories.

Such answers shall be evidence against, but not for, the party making them.

A failure to answer such interrogatories shall be deemed a contempt of court.

1535. (1117.) By oral examination.—In cases of omission without just cause to answer sufficiently such written interrogatories the court may, at its discretion, direct an oral examination of the interrogated party as to such points as it may direct, either before the court, or a person to be appointed by the court, and the court may command the attendance of such party for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon and otherwise, as to it shall seem just.

The deposition taken as aforesaid shall be reduced to writing and returned to and kept in the court in which the proceedings are pending.

The person taking the examination shall, if required by either party, report to the court the absence or conduct of the person to be interrogated, and the court may make such order as to contempt or otherwise as it may see fit.

EVIDENCE IN PARTICULAR CASES.

Upon motion. Section..... 1536
In cases involving U. S. title to land. Section..... 1537
Books of accounts. Section..... 1538
Comparison of disputed writings. Section..... 1539
In suits between State and individuals. Section..... 1540

Ch. 1096, Sec. 57, Feb. 8, 1861.

1536. (1118.) Upon motions. — Upon motions founded upon affidavits either party may offer affidavits in answer to affidavits of the opposing party. Upon the hearing of any motion, the court may, at its discretion, and upon such terms as it shall think reasonable, from time to time, order such documents as it may think proper to be produced, and such witnesses as it may think necessary to appear and be examined viva voce, either before such court or before its clerk, and upon hearing such evidence, or reading the report of such clerk, to make such rule or order as may be just.

Ch. 3915, Sec. 1, May 5, 1889.

1537. (1119.) In cases involving title from United States. A receipt of a receiver of a United States land office shall

in all cases be prima facie evidence that the title to the land covered by said receipt has passed from the United States to the person named in the receipt as having paid for the said land.

Receipt must be shown to be genuine.—Y. R. R. Co. v. Harris, 35 Fla., 385; 17 So. Rep. 568.

1538. (1120.) Books of account.—In all suits the shop books and books of account of either party, in which the charges and entries shall have been originally made, shall be admissible in evidence in favor of such party; but the credibility of such evidence shall be judged of by the jury in case of a trial at law, and by the court in case of a hearing in equity. Ch. 662, Sec. 1, Dec. 29, 1854.

Functions of the judge and jury.—Dunbar v. Wright's administrator, 20 Fla., 446; Robinson v. Dibble, 17 Fla., 457; Hooker v. Johnson, 6 Fla., 730. What proof required from administrator.—Robinson v. Dibble's administrator, 17 Fla., 457. What proof required in case of death of party making entries.—Ib. As to evidence of habits of deceased party making entry.—Ib. Suppletory oath of party as against the decedent.—Ib. Only entries made soon after fact admissible.—Grady v. Thigpen, 6 Fla., 668. May be transcribed from slate.—Ib. Definiteness of charges required.—Ib. Not confined to merchants.—Hooker v. Johnson, 6 Fla., 730. Requirements of admissibility discussed.—Ib. Lewis v. McGinnis, 30 Fla., 419; 12 So. Rep. 19.

When letter admissible.—Boykin v. State, 40 Fla., 484; 24 So. Rep. 141.

1539. (1121.) Comparison of disputed writings.—Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by the witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the jury, or to the court in case of a trial by the court, as evidence of the genuineness, or otherwise, of the writing in dispute. Ch. 1096, Sec. 55. Feb. 8, 1861.

1540. (1122.) In suits between the State and individuals. In suits between the State and individuals, no claim for a credit shall be allowed upon trial, but such as shall appear to have been presented to the Comptroller for his examination, and by him disallowed in whole or part, unless it shall be proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Comptroller's office by unavoidable accident. Feb. 10, 1837, Sec. 4.

ARTICLE 3.

OF DEPOSITIONS.

Depositions upon commissions. Sections.....1541-1554
Before justice of the peace. Sections.....1555-1559
In rei perpetuam, etc. Sections.....1560-1563
Commission to prove foreign wills. Section..... 1564
Provisions applicable to all the foregoing commissions and depositions. Sections.....1565-1569

DEPOSITIONS UPON COMMISSION.

Nov. 21, 1828 Secs. 1 and 6.

1541. (1123.) The right to a commission.—Any party to a cause at law shall have a right (at any time after the filing of a declaration) to obtain a commission from the court in which the cause is pending to take the testimony of any witness whose testimony he may require, and who may reside out of the county in which the cause is pending, or be bound on a voyage to sea, or be about to go out of the State to remain until after trial of the cause, or be very aged or infirm. Or he may obtain a commission to take the testimony of any witness upon making and filing in the court an oath that he believes that a material part of his claim or defense depends upon the testimony of such witness.

(Depositions in disbursement proceedings: See Chap. 5402, Appendix.)

1542. (1124.) Manner of obtaining a commission.—The party wishing to obtain a commission shall propound written interrogatories to the witness, and shall deliver to the opposite party or his attorneys, a reasonable time before applying for such commission, a copy of such interrogatories, together with a notice in writing setting forth the reasons why the testimony of the witness is to be taken upon commission, the date at which the application for the commission will be made and the name of the commissioner for the plaintiff. The original of such interrogatories and notice shall be filed in the court from which the commission is to issue.

If the adverse party has no attorney and does not reside in this State, the applicant shall file his interrogatories as aforesaid, and shall give notice by advertisement in a newspaper printed in the county, once each week for four consecutive weeks, in which advertisement shall be stated the name of the witness, the title of the cause, and the time of the application for a commission. Upon proof of the adver-

tisement to the clerk, or to the court if it has no clerk, a commission shall issue as if there had been personal service.

1543. (1125.) Cross-interrogatories and notice by opposite party.—The opposite party may file in the court, on or before the day named in the notice of application, his cross-interrogatories, and a written statement of the name of the commissioner selected by him to assist in the execution of the commission, and shall serve before the day named in said application, upon the applicant or his attorney, a copy of such cross-interrogatories and statement.

1544. (1126.) Re-direct interrogatories. — If the applicant shall, after seeing the cross-interrogatories, desire to propose redirect interrogatories, he shall deliver a copy of the same to the opposite party, together with a notice of the time when a commission upon direct, cross-interrogatories and redirect interrogatories will be applied for, and shall file the original redirect interrogatories in the court.

1545. (1127.) Issuance of the commission.—At the time mentioned in the application the clerk, or the court if it has no clerk, shall issue a commission to take the testimony of the witnesses desired. He shall name in the commission the commissioner selected by the applicant and the commissioner selected by the opposite party if he has selected one; shall attach to the commission all interrogatories, cross-interrogatories, and redirect interrogatories which may have been filed at the time of its issuance, and shall deliver the same to the applicant.

1546. Fees of commissioner, by whom paid.—The fees of any commissioner to take testimony shall in the first instance be paid by the party applying for the commission, but shall be taxed in the cause and be paid by the party finally adjudged to pay the cost. Sec. 1, Ch. 4727, Acts of 1899.

1547. Commissioner named to give notice.—Upon the receipt of the commission and interrogatories by the commissioner named by the applicant for the commission, it shall be his duty to give notice in writing to the commissioner named by the other party, stating the time and place of taking the depositions of the witness or witnesses named in the commission; and if the said other commissioner shall not appear and act at the said time and place, the commissioner named by the applicant may proceed and take the testimony of such witness or witnesses as if the commissioner were the only commissioner named in the commission. Sec. 2, Ib.

In such case he shall annex to the commission a copy of the notice given by him to the other commissioner with a statement of the time and place of service, sworn to by the person making such service, and shall also annex to the commission a certificate stating the failure of the other commissioner to appear and act. The testimony so taken shall be admissible as if taken by both commissioners. Nothing in this act shall prevent the commissioners from agreeing in writing upon the time and place of taking the depositions.

Sec. 3, Ib.

1548. Fees of commissioner.—The fees of the commissioner shall be the same as those allowed clerks of the circuit court for administering oaths and copying any paper, and two dollars for each witness examined: Provided, however, They shall not receive less than five dollars for each witness examined. Such compensation shall be divided equally between the commissioners, and where only one commissioner acts, he shall be entitled to the compensation allowed both: Provided, however, That where the commission is executed outside of the State, the compensation of the commissioner shall be fixed by the court at whatever may be reasonable and just.

Nov. 21, 1828, Sec. 2.

1549. Form of commission.—The commission shall be signed and bear teste as other writs, and shall be in the following form:

State of Florida, }
.....County, }

By his honor....., judge of the .....court of the (circuit or county, as the case may be).

To....., (esquire or esquires) greeting: Whereas, there is a certain controversy, now depending in the said court, between..... and....., and whereas..... is a material witness in said matter of controversy, and cannot attend our said court in person without manifest inconvenience: KNOW YE, That we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you are hereby authorized and required, to cause the said.....personally to come before you and after being duly sworn, and having duly sworn him, to examine him concerning the said matter of controversy, agreeably to the interrogatories hereunto annexed; and the answer to the same, being plainly and distinctly written, you are to send closed up under your hands and seals to our said court, to be held on the.....

day of.....next, together with this writ, and all papers hereto attached. Witness, the honorable.....judge of said court, this the.....day of....., A. D. 19..., and of the independence of the United States the .....year.

Effect of indefiniteness as to witness.—Fla. Ry. & N. Co. v. Webster, 25 Fla., 394; 5 So. Rep. 714.

1550. (1129.) The execution of the commission. — The commissioner or commissioners taking the testimony shall make oath before a notary public or judicial officer of the State or county where the testimony is taken, that he is not of kin to, nor the attorney, nor the agent of either party, nor interested in the result, and that he will well and faithfully perform the duties of commissioner. Such oath shall be in writing and returned with the commission. The commissioner shall also swear each witness before taking his deposition. Ch. 3251, Sec. 1, Acts of 1881.

1551. (1130.) Parties may be present at the examination.—The parties or their attorneys may be present at the examination of any witness, and after all the written interrogatories, cross-interrogatories and redirect interrogatories shall have been propounded to the witness, may propound other interrogatories to him germane to the subject matter of the written interrogatories, which further interrogatories and the answers thereto shall be written down by the commissioners, or by some one at their request, and shall become a part of the depositions.

1552. (1131.) Return of the commission.—

1. Endorsement and Address.—Commissioners, when they enclose the interrogatories, answers and commission to be returned to the court, shall write their names across the seals of the envelope and give the packet such direction as will enable the court to know that it was intended for the court, and applicable to some particular cause therein; and the usual abbreviations or initials of office, and of the Christian names of the commissioners, postmasters, magistrates, clerks, attorneys, and witnesses shall be deemed sufficient. Nov. 21, 1828. Sec. 5.

1553. (1131.) Return by mail and by private hand.—A packet containing commissions, interrogatories and answers may be returned to the court by a party in the cause, or by any other person, or by mail; if returned by private hand, the person so returning it must make oath before the clerk, or before the court if it has no clerk, that he received the Ib., Sec. 4.

packet from one of the commissioners; that it has been in his possession ever since, and has not been opened or altered. Any person, other than the clerk of the court, taking said packet from the postoffice must, when he delivers it in court, or to the clerk, swear that he received it from the postmaster, his deputy or assistant; that it has been in his possession ever since, and has not been opened or altered.

Ib., Sec. 5.

1554. (1132.) Opening depositions. — When interrogatories and answers have been returned they may be opened by order of the court or consent of the parties, which consent shall be endorsed on the envelope, and they shall remain with the clerk, subject to the inspection of either party.

All the requirements of the preceding section must be complied with before they are opened.

Court cannot compel party to read depositions taken by him. Other party may read them.—Broughton v. Crosby, 9 Fla., 254.

TAKING DEPOSITIONS BEFORE A JUSTICE OF THE PEACE.

March 15, 1843, Sec. 1.

1555. (1133.) Grounds for taking.—Depositions may be taken before any justice of the peace under the same circumstances under which a commission may be obtained as provided in this chapter.

Ib., Secs. 2 to 7.

1556. (1134.) Notice of taking.—Before such deposition shall be taken, the justice of the peace shall give notice in writing to the adverse party or his attorney of the time and place of taking such depositions. Such notice shall be served at least twenty-four hours before the taking, in addition to one day for every twenty miles of travel by the party served to the place of taking the depositions. Service of the notice may be made upon the party or his attorney personally, or by leaving a copy at the place of abode of the party. If such service cannot be made, notice by advertisement may be given, as provided in Section 1542. At the time of serving the notice, the justice of the peace shall also serve a copy of the written interrogatories to be propounded by the party requiring the examination, and upon the examination the witness shall, after having been duly sworn by the justice, answer first the written interogatories, and then such other interrogatories germane to the subject matter of the written interrogatories as the parties may propound to him; and the testimony shall be taken down in writing by the justice or by some person appointed by him, and shall be read to and subscribed by the deponent.

Ib., Sec. 9.

1557. (1135.) Certificate by justice.—The justice shall annex to the deposition a certificate stating the time and

manner of taking it, the person at whose request, and the cause or suit in which it was taken, and the reason for taking it; and stating also whether the adverse party attended, and, if not, stating the notice, if any, which was given to him.

1558. (1136.) Return of the deposition.—The deposition shall be filed by the justice personally in the court before which the cause is pending, or shall be sent by mail by him and shall remain sealed until opened by the court. Ib. Sec. 10.

1559. (1137.) Objections to the witness or depositions. Every objection to the competency or credibility of the deponent and to the propriety of any questions put to him, or of any answers made by him, may be made when the deposition is produced, in the same manner as if the witness were personally examined on the trial. Ib., Sec. 11.

Objection to competency of witness may be made when deposition offered.—Walls v. Endel, 17 Fla., 478.

DEPOSITIONS IN REI PERPETUAM, ETC.

1560. (1138.) Manner of obtaining commission.—Any person desirous of perpetuating the testimony of any witness living in or out of this State, shall file in the office of a clerk of the circuit court the interrogatories to be propounded to the witness, and a statement setting forth briefly and substantially his title, claim or interest in or to the subject matter concerning which he desires to perpetuate the evidence, together with the names and residences of all persons known to him to claim an interest in the subject matter or any part thereof, and the names of the witnesses proposed to be examined. Upon such filing, the clerk shall cause a notice of the application for the commission, accompanied by a copy of the interrogatories and statement, to be served on the person named in such statement as claiming an interest in the subject matter concerning which the deposition is to be taken, at least fifteen days before the issuance of the commission. He shall also, if the applicant require it, publish in a newspaper published in said county, once each week for four successive weeks, a notice to all persons interested in said subject matter, stating the time and place when the application for the commission will be made, the request of the applicant, and the name of the witness, and the subject matter of the examination. Upon the expiration of the time fixed in the notice, or in the advertisement, if there shall have been one, the clerk shall issue a commission to two commissioners to be named by him, to take the testimony of the witness mentioned, upon the direct Ib., Sec. 14.

interrogatories, and other interrogatories which any person claiming an interest in the subject matter may have filed.

1561. (1139.) Execution of such commission.—The right of the parties to file interrogatories and proceedings in connection therewith, the execution and return of the commission and proceedings in connection therewith, shall be in accordance with the provisions relating to commissions.

1562. (1140.) Return and record of the depositions.—The depositions, and the commission, with all interrogatories, shall be returned to the clerk who issued the commission, who shall cause the same, together with the statements of the applicant and the notice and advertisement, if any, to be recorded in the registry of deeds in the county where the land lies, if the deposition relates to real estate, otherwise in the county where the parties or some of them reside. After such recording the original papers shall remain in the office of said clerk.

Ib., Sec. 17.

1563. (1141.) The effect of the deposition.—If any suit shall, either at the time of taking such deposition or at any time afterward, be pending between the person at whose request it was taken and the persons named in the said written statement, or any of them, who were notified as aforesaid, or any persons claiming under either of the said parties, respectively, concerning the title, claim or interest set forth in the statement, or, if the notice by advertisement hereinbefore provided for shall have been given, then between the persons at whose request it was taken or any person claiming under him concerning the claim, title or interest set forth in the statement, and any other person, the deposition so taken, or a certified copy of it from the registry of deeds, may be used in such suit in the same manner and subject to the same conditions and objections as if it had been originally taken for the said suit.

Ib., Sec. 18.

COMMISSIONS TO PROVE FOREIGN WILL.

1564. (1142.) Commission to prove foreign will.—If any will shall be produced to a county judge for probate, and any witness or witnesses attesting the same shall reside out of this State, such judge may issue a commission, to which shall be annexed such will, directed to any person who, by the laws of the country where such witness may be found, is authorized to administer an oath, empowering him to take and certify the attestation of said witness. If the person to whom such commission shall be directed shall duly certify that the witness personally appeared and made oath or

Nov. 21, 1828, Sec. 7.

affirmation, as the case may be, that the testator signed and published the writing annexed to such commission as his last will and testament, and that he subscribed his name thereto in his presence and at his request, such oath or affirmation shall have the same operation, and the will shall be recorded in like manner, as if such oath or affirmation had been made in the court whence the commission issued.

PROVISIONS APPLICABLE TO ALL COMMISSIONS AND DEPOSITIONS THEREUNDER.

1565. (1143.) Attendance of witness. Commissioners may issue a subpoena.—Any commissioners appointed to take depositions may issue a subpoena directed to the witness mentioned in said commission, commanding said witness to be and appear before said commissioners at a certain time and place (within the county in which said witness resides) to be designated in said subpoena. March 6, 1845, Sec. 1.

1566. (1144.) Punishment of witness.—If said witness refuse or neglect to appear before said commissioner or commissioners, in obedience to said subpoena, said commissioner or commissioners may issue an attachment for said witness so refusing or neglecting to appear, which attachment shall be directed to the sheriff, who shall have power to arrest the person so refusing to answer and bring him before the commissioner or commissioners, who shall have power to imprison said witness until he consents to answer before said commissioners, and the witness so offending shall pay all costs which may accrue. Or the commissioner or commissioners may report the default of the said witness to the court from which the commission issued, or to the circuit court of the county in which the deposition is to be taken, and said court shall have power to punish the said witness for contempt of court. Ib., Sec. 2.

1567. (1145.) Power of commissioners of other States. Commissioners appointed by the courts of the United States, or of any of the States or Territories of the United States, to take the testimony of any person residing within the limits of this State, shall have as full and ample powers as if they were appointed by the courts of this State. Ib., Sec. 3.

1568. (1146.) Use of deposition after non-suit.—When the plaintiff in any suit shall discontinue it, or become non-suit, and another suit shall afterward be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken for the first suit may be used in the second, in the same manner and sub- March 15, 1848, Sec. 12.

ject to same conditions and objections as if originally taken for the second suit: Provided, That the deposition shall have been duly filed in the court where the first suit is pending, and shall remain in the custody of the court from the termination of the first suit until the commencement of the second.

Nov. 21, 1828, Sec. 9.

1569. (1147.) Failure of applicant to attend taking of depositions.—If any person shall give a notice to take a deposition, and shall fail to take or cause the same to be taken, the party notified, if attending agreeably to the notice, shall be entitled to receive four cents for every mile that he shall necessarily travel in going to and returning from the place assigned to take the deposition, and two dollars ($2) per day consumed in such travel, to be allowed by the court where the suit is pending, and for which execution may issue according to law.

The provisions of this section shall not be extended in any case where the failure to take the deposition shall arise from the non-attendance of the witness, or any other unavoidable cause, and the oath of the applicant shall be sufficient to establish the unavoidable cause.

Depositions must be offered in evidence, not a part of the record.—Myers v. Roberts, 35 Fla., 255; 17 So. Rep. 358.

CHAPTER XVI.

OF JURORS.

ARTICLE 1.—Qualifications. Sections.....1570-1571
2.—Disqualifications of. Section..... 1572
3.—Exemptions of. Section..... 1573
4.—Procurement of. Sections.....1574-1585
5.—Compensation of grand and petit jurors. Sections.....1586-1588
6.—Penalty upon officer failing to draw or summons. Section 1589
7.—Failure of juror to attend. Section..... 1590
8.—Fund for payment of. Sections.....1591-1597

ARTICLE 1.

QUALIFICATION, DISQUALIFICATION AND LIST OF JURORS.

Sec. 1. Ch. 4122, Acts of 1893.

1570. Qualifications and disqualifications.—Grand and petit jurors shall be taken from the male persons above the age of twenty-one years who have resided in this State for

one year, and in their respective counties for six months, and who are citizens of the State of Florida; but no person who shall have been convicted of bribery, forgery, perjury, larceny or other high or infamous crime, unless restored to civil rights, shall be permitted to serve as a juror.

1571. Selection of lists and further qualifications.—The board of county commissioners of the several counties of this State, at a meeting to be held the first week in January of each year, or as soon thereafter as practicable, shall select from the list of male persons who are qualified to serve as jurors under the provisions of foregoing section and make out a list of not less than two hundred and ninety (290) nor more than three hundred and ten (310) persons properly qualified to serve as jurors, who, in addition to the qualifications above mentioned, shall be such persons only as they know or have good reasons to believe are of approved integrity, fair character, sound judgment and intelligence; which list shall be signed by the chairman of the board, and be forthwith delivered to the clerk, and by him recorded in the minutes of the board. Sec., 2 Ib.

In counties where criminal courts of record may exist, the county commissioners shall make out a list of not less than four hundred and fifty (450) nor more than five hundred (500) names of persons who are qualified to serve as jurors under the foregoing provisions: And Provided further, That if in any of the counties in this State the county commissioners shall not be able to select the number required by this section, they shall be authorized to select a less number, to be the highest number possible: And Provided further, That if any person so selected shall be ascertained to be disqualified or incompetent to serve as a juror, such disqualification shall not affect the legality of such list or be cause of challenge to the array of any jury chosen from such list, but any person ascertained to be disqualified to serve as a juror shall be subject to be challenged for cause.

Commissioners have power to pass upon qualifications of jurors.—Reeves v. State, 29 Fla., 527; 10 So. Rep. 901. Time provided for the meeting is directory.—Ib.

List must be recorded in minutes of county commissioners.—White v. State, 26 Fla., 602; 7 So. Rep. 857.

ARTICLE 2.

DISQUALIFICATION OF JURORS.

1572. (1149.) Persons disqualified.—

Sec. 1149. Rev. Stat. 1892.

1. By Crime.—No person who is under prosecution for any crime, or has been convicted of bribery, forgery, perjury or larceny, unless such person shall have been restored to civil rights, shall be qualified to be a juror.

A juror who believes that he is under prosecution for crime is properly excused.—Ellis v. State, 25 Fla., 702; 6 So. Rep. 768.

2. By Official Position.—Neither the Governor, nor his cabinet officers, nor any sheriff or his deputy, assessor of taxes, collector of revenue, county treasurer, clerks of courts, judges, justice of the peace, county commissioners or United States officials shall be qualified to be jurors.

Assessor of taxes for city or town not disqualified or exempt, but court may excuse him.—Ellis v. State, 25 Fla., 702; 6 So. Rep. 768.

3. By Infirmity.—No person not of sound mind and discretion shall be qualified to be a juror.

Sufficiency of intelligence in sound discretion of court below.—Jefferson County v. Lewis, 20 Fla., 980.

4. By Interest in the Subject Matter of the Cause.—No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the State or any county or municipal corporation is a party by reason of the fact that such person is a resident or tax payer within the State, or such county or municipal corporation.

Holders of bonds similar to those in suit disqualified.—Jefferson County v. Lewis, 20 Fla., 980.

Disqualification of juror avoids verdict.—Ladd v. State, 17 Fla., 215.

ARTICLE 3.

EXEMPTIONS FROM JURY DUTY.

1573. (1150.) Persons exempt from jury duty.—The following persons, and none others, shall be exempt from jury duty:

1. By Reason of Age or Bodily Infirmity.—All persons more than sixty-five years of age, and all persons subject to any bodily infirmity amounting to disability.

2. By Reason of Position or Occupation.—Attorneys and counsellors at law, officers of the university, officers of colleges, preceptors and teachers of incorporated academies, teachers of common schools, practicing physicians and surgeons, pharmacists, ministers of the gospel, one miller to each grist mill, one ferryman to each licensed ferry, telegraph operators, all superintendents, engineers and train dispatchers of any canal or railroad in operation, ten active members of any hand fire company, six active members of any hose company, twenty active members of any hook and ladder company, all members of the State militia when in active service under call by the sheriff of the county or by the government. The officers of each fire, hose and hook and ladder company shall, on the first day in each January, file with the clerk of the circuit court of the county a list of the members of their respective companies, which said companies have been respectively selected to be exempt for the ensuing year, and the county commissioners shall omit the said names from the list to be selected by them. Only the persons named on such lists shall be exempt, and if no lists be filed before the selection by the county commissioners, there shall be no exemption. Sec. 1150, Rev. Stat., 1892.

3. Employees of Certain State Institutions.—The employees of all insane, deaf and dumb and other asylums and hospitals established and maintained by the State of Florida as State institutions, for the care, maintenance, treatment, etc., of the afflicted of the State, shall be and are hereby exempt from serving as grand and petit jurors in the courts of the State. Secs. 1 and 2, Ch. 4574, Acts of 1897.

4. Superintendent to File Certified List.—On the first Monday in January, April, June and September in each calendar year the superintendent or person having charge of such institution shall file in the office of the clerk of the circuit court of the county where such institution is situated, a certified list of all adult male employees of the same. Any and all officers having the duty of selecting the names of persons to serve as jurors shall exclude from the box, or collection of names from which such selection is to be made, the names contained in the list certified and filed as provided in foregoing section: Provided, Such officers may, at or within ten days prior to the opening of any regular or special term of any court in the county, require the superintendent of such institution to certify whether any particular person has left the employ of the same since the date of the list of employees last certified by him, and any person thus certified as having Sec. 3, Ib.

left the employ of the institution shall, by the clerk of the circuit court, be stricken from the superintendent's last certified list of employees, and shall no longer be exempt from jury duty.

(Exemption from jury duty officers and men of State militia: See Section 737.)

ARTICLE 4.

PROCUREMENT OF JURORS.

Sec. 4, Ch. 4122, Acts of 1893.

1574. Transcription and preservation of list.—On receiving the list of jurors as provided for in Section 1571, the clerk of the circuit court, in the presence of the sheriff or deputy sheriff, shall write the names of the persons contained therein on separate pieces of paper, and shall roll up or fold such pieces of paper so that the names written thereon shall not be visible, and shall deposit such pieces of paper in a box so constructed that it may be tightly closed; said box shall be then, and immediately after the drawing of any jury as hereinafter provided, closed and securely locked, and across the opening thereof shall be placed a label or seal containing the signatures of the clerk and sheriff and the date of the closing of such box. The clerk shall keep such box in his custody, but the key thereof shall be delivered to and kept by the sheriff.

DRAWING THE JURY.

Sec. 5, Ch. 4122, Acts of 1893, as amended by Sec. 1, Ch. 4586, Acts of 1895, and Ch. 5127, Acts of 1903.

1575. Circuit judge to draw jury.—At every regular or special term of the circuit court the judge thereof, in open court and in the presence of the clerk or a deputy clerk, and in the presence of the sheriff or his deputy, shall proceed to draw from such box the names of thirty-six (36) persons to serve as jurors at the next succeeding regular or special term of said court. It shall be the duty of the judge to make a list in his own handwriting of the names of the persons so drawn, and deposit the said list, together with the slips containing the names of the persons drawn from the box, in an envelope, securely sealed, and his name written at least twice across the flap of the envelope; this envelope shall be delivered to the clerk of the court, who shall keep the same in some secure place; and at least fifteen days before the opening of the next term of said court, it shall be the duty of the clerk to open said envelope, in the presence of the county judge of the county, or in his absence, in the presence of a

justice of the peace, and to make a list of said names and issue and deliver to the sheriff a venire with the seal of the court, commanding him to summons the persons so drawn as jurors to appear before the court at the next ensuing term thereof.

On the opening day of such succeeding term, or as soon thereafter as practicable, it shall be the duty of the judge to place the names of the thirty-six (36) persons so summoned, or of so many of them as may appear in response to the summons, in a box, and draw therefrom the names of eighteen (18) persons, who shall serve as grand jurors for the term, and the persons whose names remain in the box shall serve as petit jurors for the first week of the term: Provided, That in counties where criminal courts now exist, or may hereafter be established, or when special terms of the circuit court are ordered to be held, it shall not be necessary to draw from the box the names of more than twelve (12) persons to serve as jurors at the next succeeding term of the circuit court, when only petit jurors are required. But the judge may, whenever in his judgment the public interest requires it, draw, or order the drawing, of the names of thirty-six (36) persons from which when summoned and appearing can be drawn a grand jury to serve in such cases at the next succeeding term.

1576. Proceedings when no jury drawn by judge.—Whenever from any cause no jurors shall have been drawn as provided in the foregoing section, then it shall be the duty of the clerk, at least fifteen days before the sitting of any regular or special term of the circuit court at which a jury shall be required, in the presence of the county judge, or in his absence, in the presence of a justice of the peace, and the sheriff or a deputy sheriff of the county, to proceed to draw from the box the names of thirty-six (36) persons to serve as jurors at the next term of the court, and to issue a venire commanding the sheriff to summons the persons so drawn as provided in the preceding sections. The drawing of such jurors shall be publicly made in the court house, and the time and place thereof shall be advertised ten (10) days previously by written notices posted at three (3) public places in the county, and the sheriff shall proclaim the meeting and its purpose at the door of the court house, just prior to the drawing: Provided, That the drawing in such cases for special terms of the circuit court, or in counties where there are county criminal courts, shall be for twelve jurors only, to serve as petit jurors, unless the judge shall order the drawing of a sufficient number to compose a grand jury for the term.

Sec. 6 Ch. 4122, Acts of 1893, as amended by Sec. 2, Ch. 4386, Acts of 1895.

1577. (1152.) Jury for second and succeeding weeks. In any counties when the circuit court is continued and held for more than one week, the judge thereof may each week draw, in the manner prescribed in Section 1575, the names of twelve (12) persons to serve as petit jurors for the succeeding weeks as long as the said court shall continue in session. The judge shall have power to hold any juror over beyond the end of the week for which he was drawn, if such juror is engaged in the trial of a case in which no verdict has been rendered. No person shall be drawn to serve on a petit jury more than once during the same calendar year.

Sec. 7, Ch. 4122, Acts of 1893, consolidated with Ch. 3010, Sec. 3, Feb. 17, 1877.

This provision creates an exemption, not a disqualification.—Blount v. State, 30 Fla., 287; 11 So. Rep. 547; Lambright v. State, 34 Fla., 564; 16 So. Rep. 582; Yates v. State, 43 Fla., 177; 29 So. Rep. 965.

1578. (1156.) Procurement of jurors for special terms. Whenever there shall be called a special term of any circuit or county court, the judge thereof shall have power in vacation to order the clerk thereof to draw petit jurors for such special term, and to issue venires for the same in the manner provided by law.

Ch. 2046, Sec. 2, Feb. 20, 1875.

1579. Procedure when panel quashed or none drawn. If it shall appear at any term of the circuit court that the jurors drawn for such term have been regularly drawn and the list or panel so drawn shall be quashed, or if such panel shall be quashed for any cause, or if there shall have been a failure or omission to draw the list or panel as is now provided by law, the judge shall, in open court, draw from the box in which are deposited the names of the persons selected by the county commissioners to serve as jurors for that year, the names of thirty-six persons to serve as jurors at such regular or special term of the court; and such drawing shall be in the presence of the clerk or his deputy and of the sheriff or his deputy.

Sec. 1, Ch. 4736, Acts of 1899.

When no grand jury shall be required at such term, then only twelve names shall be drawn from such box, and where only twelve are drawn, such of them as shall be summoned and appear shall be placed in the box to serve as petit jurors: And Provided further, That whenever the circuit judge shall be satisfied that the public interests will be best subserved thereby, he may authorize the sheriff to summons either number of persons aforesaid, for the purposes aforesaid, from the body of the county, and the names of such of them as shall appear shall be placed in the box for the purposes above provided.

See Gamble v. State.

1. Duty of Clerk of Court.—It shall be the duty of the clerk of said court to make a list of said names, and issue and deliver to the sheriff of the county wherein said term of court is held a venire, with a seal of the court, commanding him to summon the persons so drawn to appear forthwith before said court to serve as jurors therein during said term. Sec. 2, Ib.

2. Drawing Grand Jurors.—It shall be the duty of the judge to place the names of thirty-six persons so drawn, or so many of them as shall appear in response to said summons, in a box, and draw therefrom the names of eighteen persons, who shall serve as grand jurors for said regular or special term, and the persons whose names shall remain in said box shall serve as petit jurors for the first week of said term of court. Sec. 3 Ib.

1580. For county and criminal court.—In counties where county courts or criminal courts of record may exist, the judge thereof at every regular term shall, in the manner prescribed in Sections 1575 and 1577 for drawing jurors in the circuit court, proceed to draw from the jury box hereinbefore provided for, the names of twelve (12) persons to serve as jurors at the next succeeding term of said court; and whenever, for any cause, no jurors shall have been so drawn, the clerk of the circuit court shall, under the direction of the judge of the criminal court of record, or the judge of the county court, as the case may be, proceed to draw such jurors in the manner prescribed in Section 1576. Sec. 8, Ch. 4122, Acts of 1893.

1581. (1157.) Procurement of jurors not drawn from the list.—Whenever for any cause no petit jurors, or less than the whole number, have been drawn or summoned in the manner provided by law for any regular or special term of the circuit or county courts of this State, it shall be lawful for said courts to issue a special venire for a sufficient number of such jurors for said term, to be directed to the sheriff, commanding him to draw from the box, or to summon from bystanders or the body of the county at large, the number of qualified jurors so ordered. Ch. 2046, Acts of 1877, Sec. 1.

This section construed.—Waldon v. State, 41 Fla., 265; 26 So. Rep. 701. Empaneling juries.—Ch. 4122 does not repeal Section 3853.—Sheppard v. State, 36 Fla., 374; 18 So. Rep. 773.

1582. (1158.) Deficiency of jurors to try any cause. Whenever it shall appear to the court that, by reason of challenges or otherwise, a sufficient number of jurors of those drawn and summoned cannot be obtained for the trial Ch. 1628, Secs. 21, 22, 23, Aug. 1, 1868, amended by Sec. 3, Ch. 4386, Acts of 1895.

of any cause in the circuit court, criminal or county court, the court shall draw or cause to be drawn from the box, to be summoned, or shall direct the sheriff to summon from bystanders or from the body of the county, a sufficient number of qualified jurors to complete the panel for the trial of such cause.

No special venire nor formal return necessary.—Green v. State, 17 Fla., 669. Order may be in alternative.—Keech v. State, 15 Fla., 591. Special venire for talesman; from whom jurors summoned.—Gladden v. State, 13 Fla., 623. Court may issue special venire in anticipation of exhaustion of . mbright v. State, 34 Fla., 564; 16 So. Rep. 582.

Ch. 1857, Sec. 1, Jan. 4, 1871.

1583. (1159.) Deficiency in county.—Whenever it shall appear that there is not a sufficient number of qualified jurors to form a grand and petit jury, the judge of the circuit court, upon ascertaining such, may order all cases pending for trial in the circuit court of any such county transferred to some other county within his circuit for trial, and indictments may be obtained (against persons charged with crimes committed in any county not having a sufficient number of qualified jurors to form a grand and petit jury) in any county within the circuit to which such county is attached or belongs.

Objection to oath to juror must be taken at time of administration.—Seymour v. Purnell, 23 Fla., 332; 2 So. Rep. 312. Presumption that jury was properly drawn and selected.—Oliver v. State, 38 Fla., p. 46; 20 So. Rep. 803.

SUMMONING OF JURORS DRAWN FROM LIST.

Ch. 1628, Sec. 6 Aug. 1, 1868.

1584. (1154.) Issuance of venire.—The clerk of the circuit or county court, as the case may be, shall, ten days at least before the first day of court, issue and deliver to the sheriff a venire for the petit jury, under the seal of the court, commanding him to summon the persons.

Ib., Sec. 8.

1585. (1155.) Summoning and return.—The sheriff shall summon the persons named in such venire to attend such court as petit jurors, at least four days previous to the sitting of such court, by giving personal notice to each person, or by leaving a written notice at his place of residence with some person over fifteen years of age. He shall return the venire to the court at the opening thereof, specifying those who were summoned and the manner in which each person was notified.

ARTICLE 5.

PAY OF GRAND AND PETIT JURORS.

1586. (1161.) Pay of jurors.—Grand jurors and petit jurors of the regular panel, and jurors summoned to complete a jury after the regular panel is exhausted, who are accepted and serve on the jury, in the circuit courts, criminal courts of record and county courts of this State, shall receive for each day of actual attendance upon the court two dollars ($2), but if a juror at his own request is excused from serving, he shall receive no compensation except mileage. Jurors summoned to the courts aforesaid to complete a jury after the regular panel is exhausted, and who are not accepted and not required to serve on the jury, shall receive compensation at the rate of two dollars ($2), per day, to be fixed and allowed by the court for the time they are actually detained in attendance upon the court. Jurors in the courts of county judges and justices of the peace, and jurors summoned upon inquests of the dead, shall be paid fifty (50) cents for each day they serve on the jury. In addition to the compensation above provided, all jurors shall receive five (5) cents per mile for every mile necessarily traveled in going to and returning from court by the nearest practicable route.

Sec. 1, Ch. 4385, Acts of 1895, consolidated with Ch 3853, Sec. 1, June 8, 1889.

Jurors who attend on any of the days of a term when the presiding judge is absent, or being present does not hold the session of the court, shall be entitled to receive the same compensation as if the court were in session.

1587. (1162.) Meals for jurors.—When a jury sits more than twelve hours, the sheriff may, by order of the court, provide them with three meals a day, the expense of said meals not to exceed one dollar per day for each juror, and said expenses to be taxed against and paid by the State.

Ch. 3860, Acts of 1889, Sec. 1.

1588. Pay of jurors in vacation.—The mileage and per diem of jurors summoned specially to try any issue of facts arising in a civil cause under the laws of this State, before any court or judge in vacation, shall be taxed as costs, and paid by the parties to the cause as other costs are paid; and before such jury is summoned, the party demanding the same may be required by the court or judge to deposit an amount sufficient to cover the cost of such jury trial.

Sec. 1. Ch. 4127, Acts of 1893.

ARTICLE 6.

PENALTY UPON OFFICERS FAILING TO DRAW OR SUMMON JURORS.

Ch. 1628, Sec. 29, Aug. 1, 1868.

1589. (1163.) Punishment.—When, by neglect of any of the duties required by this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall not be duly drawn and summoned to attend court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars (to be imposed by the court) into the treasury of the county in which the offence is committed.

ARTICLE 7.

FAILURE OF JURORS TO ATTEND.

Ib., Sec. 8.

1590. (1164.) Penalty.—If any person duly drawn and summoned to attend as a juror in any court shall neglect to attend without any sufficient excuse, he shall pay a fine not exceeding twenty dollars, which shall be imposed by the court to which the jury was summoned, and shall be paid into the county treasury.

ARTICLE 8.

OBTAINING MONEY FOR PAY OF JURORS AND WITNESSES.

Sec. 1, Ch. 4121 Acts of 1893, as modified by amendment of 1893 to Sec. 9, Art. 16, Constitution, and the fine and forfeiture acts.

1591. Clerks to estimate amount and make requisition. Within four weeks of the commencement of any term of the circuit court in and for any county in this State, whether the same be a regular, special or adjourned term, the clerk of the circuit court of such county shall make an estimate of the amount necessary for the payment of jurors and witnesses before the grand jury at said term of court, and shall forward such estimate to the Comptroller of this State; and at the time of forwarding such estimate the clerk shall make his requisition upon the Comptroller for the amount of such estimate, and the Comptroller shall have the power to reduce the amount if in his judgment the requisition is excessive.

1592. Comptroller to endorse requisition.—Upon the receipt of such estimate and the requisition from the clerk of the circuit court, the Comptroller shall endorse on same the amount that he may deem necessary for the pay of said jurors, and the Treasurer shall transmit that amount to such clerk of the circuit court. Sec. 2, Ib.

1593. Comptroller may apportion appropriation.—If the Comptroller shall have reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of jurors in all the counties at the next ensuing term of the circuit court, he shall have power to apportion the moneys in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of jurors in each county at the last regular term of the court; and in such case the Treasurer shall transmit only the amount so apportioned to each county; and when the amount so apportioned to any county is insufficient to pay in full all the jurors at any term of the court, the clerk of the circuit court shall apportion the money received by him pro rata among the jurors entitled to pay at such term, and shall give to each juror a certificate of the amount of compensation still due, which certificate shall be allowed by the Comptroller as other demands against the State. Sec. 3, Ib.

1594. Clerks to disburse money.—All the moneys drawn from the treasury under the provisions of this act by the clerk of the circuit court shall be disbursed by said clerk of the circuit court as far as needed in payment of jurors for the legal compensation for services at the term of the court for which said moneys were drawn, and to no other purposes; and should any of the said moneys remain in the hands of said clerk unexpended after the payment of all said jurors properly on the pay-roll at any term of the circuit court, the clerk shall transmit the same to the Comptroller within ten days after the adjournment of such court, and upon failure to do so, shall be suspended from office by the Governor until the next meeting of the Legislature, when the Governor shall report his action to the Senate. Sec. 4, Ib.

1595. Deficiency.—Should the compensation of jurors at any term of the circuit court exceed the amount estimated by the clerk and therefore be insufficient to pay in full said jurors, said clerk shall make his further requisition upon the Comptroller for the amount necessary to pay such deficiency, and the amount required shall be transmitted to the clerk in the same manner as the original requisition or order. Sec. 5, Ib.

Sec. 5, Ib.

1596. Clerk to make triplicate pay rolls.—The clerk of the circuit court of the several counties of this State shall make out a pay roll in triplicate which shall contain the name of every juror who has attended any session of such court, which pay roll shall state the number of days which each juror served, and the number of miles traveled, and the amount of moneys each juror is entitled to for his services during such term of court; the form of such pay roll shall be prescribed by the Comptroller, the jurors shall sign the same in presence of a witness, and the presiding judge shall examine and approve the same if found correct; the clerk of the circuit court shall forward two of such pay rolls to the Comptroller within ten days after the adjournment of such court; the Comptroller shall audit the same and draw his warrant on the treasury for the amount due thereon, and shall pay over to the Treasurer such warrant and the amount returned by the clerk of the court, taking up the requisition of the clerk given to the Treasurer.

Ch. 3108, Sec. 8, March 8, 1879.

1597. (1170.) Accounting and payment to the Comptroller.—The clerk shall, within two weeks after the adjournment of any term, render to the Comptroller a full statement of his accounts for moneys received and disbursed by him under the foregoing provisions, and pay over any balance in his hands; and should any such clerk fail to account for and pay over promptly all moneys so paid him, the sureties on his official bond shall be held liable and responsible for the same; and it shall be the duty of the Comptroller to report to the Governor any failure on the part of the clerk to fully report and faithfully account for any such moneys; and the Governor is authorized, on such report from the Comptroller, to suspend from office any such defaulting clerk until the next session of the Legislature.

CHAPTER XVII.

JUDGMENTS.

(For judgments for default, see Secs. 1422 to 1426.)

ARTICLE 1.—Form of. Sections.....1598-1599
2.—Lien of. Sections.....1600-1603
3.—Interest on. Section..... 1604
4.—Subrogation of sureties. Section..... 1605
5.—Invalidity of power of attorney for confessing. Section 1606
6.—Judgment against one in suit against several. Section.. 1607

ARTICLE 1.

FORM OF JUDGMENTS.

1598. (1171.) Generally.—In all actions where either party recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages. Ch. 1096, Sec. 40 Feb. 8, 1861.

Form of against extr.—Cooper v. Livingston, 19 Fla., 684. Entry "verdict for plaintiff—let writ issue" is not judgment.—Stark v. Billings, 15 Fla., 318.

1599. (1172.) Upon bonds.—In all actions which shall be brought upon any bond for payment of money, wherein the plaintiff shall recover, judgment shall be entered for the principal and interest due thereon, and the costs of suit, and execution shall issue thereon accordingly.

Judgment must conform to the pleadings.—So. Bell, etc., Co. v. D'Alemberte, 39 Fla., 25; 21 So. Rep. 570. Must conform to the verdict.—Holliday v. McKinne, 22 Fla., 153.

When voidable only cannot be collaterally attacked.—Einstein v. Davidson, 35 Fla., 342; So. Rep. 563; Lee v. Patten, 34 Fla., 149; 15 So. Rep. 775.

Payment of judgment to clerk in 1864 does not discharge payment.—Hendry v. Benliza, 37 Fla., 609; 20 So. Rep. 800.

Entered in term supposed to be correct.—Parkhurst v. Stone, 36 Fla., 463; 18 So. Rep. 594; Jordan v. John Ryan Co., 35 Fla., 259; 17 So. Rep. 73.

Construed by the whole record.—Elizabethport Cordage Co. v. Whitlock, 37 Fla., 190; 20 So. Rep. 255.

May be amended at a subsequent term.—McGriff v. Ried, 37 Fla., 51; 19 So. Rep. 339.

On bond, bond must be produced.—West v. Fleming, 36 Fla., 298; 19 So. Rep. 587.

When sufficient in form.—Sammis v. Wightman, 31 Fla., 10; 12 So. Rep. 526; Williams v. Hutchinson, 26 Fla., 513; 7 So. Rep. 852; Taylor v. Branham, 35 Fla., 297; 17 So. Rep. 552.

When void may be assailed collaterally.—McGehee v. Wilkins, 31 Fla., 83; 12 So. Rep. 228; Epstein v. Ferst, 35 Fla., 498; 17 So. Rep. 414; Einstein v. Davidson, 35 Fla., 342; 17 So. Rep. 563.

Presumption not against the correction of the judgment.—McConnell v. Sullivan, 7 Fla., 576; 20 So. Rep. 762. Except in courts of limited jurisdiction.—McGehee v. Wilkins, 31 Fla., 83; 12 So. Rep. 228.

ARTICLE 2.

LIEN OF JUDGMENTS.

1600. (1173.) In counties where rendered.—Every judgment at law (and decree in equity) which shall be entered Feb. 12, 1834, Sec. 1.

in any of the circuit courts of this State shall create a lien and be binding upon the real estate of the defendant in the county where rendered.

Lien from rendition—effect of death of defendant.—Union Bank v. Powell, 3 Fla., 175.

Ib., Sec. 2.

1601. (1174.) In other counties.—Such judgments and decrees shall create a lien upon the real estate of the defendant situated in any other county than the one in which the same shall have been rendered, when a certified transcript of the said judgment or decree shall have been recorded in the county in which the real estate so sought to be bound may be situated.

Not applicable to United States court judgment.—Doyle v. Wade, 23 Fla., 29; 1 So. Rep. 516.

Ch. 2040, Sec. 43, Feb. 27, 1875.

1602. (1175.) Of judgments of county courts, justices of the peace, etc.—Judgments of county courts, county judge's courts and justices of the peace shall become a lien on the real estate of the defendant situated in any county, from the time of the filing in the office of the clerk of the circuit court for said county of a transcript of such judgment and the entry thereof by the clerk in a book to be kept by him for such purpose.

Lien not affected by want of right to execution.—Howe v. Robinson, 20 Fla., 352. Liens of senior and junior judgments.—Ib.; Mosely v. Edwards, 2 Fla., 429. Lien upon undivided interests follows fund arising from partition; form of remedy in such case.—Eldridge v. Post, 20 Fla., 579. Lien attaches to after acquired real estate.—Harrison v. Roberts, 6 Fla., 711. Lien not lost by delay in suing out execution.—Mosely v. Edwards, 2 Fla., 429. Is constructive notice to the world.—Ib. Not displaced by sale under junior judgment.—Ib. Does not prevent debtor, remaining solvent, from conveying good title to real estate.—Howse v. Judson, 1 Fla., 133.

Ch. 4919, Acts of 1901.

1603. How lien lost when record is burned.—Whenever the records of any court in any county in this State showing the entry or rendition of any judgment or decree have been heretofore destroyed by fire, such judgment or decree, or any execution issued thereon, shall not be good and effectual as a lien on real estate as against creditors or subsequent purchasers for a valuable consideration and without notice, unless legal proceedings to re-establish the same shall be begun in the proper court within nine months from the passage of this act.

ARTICLE 3.

INTEREST UPON JUDGMENTS.

1604. (1176.) At the rate of eight per cent.—All judgments (and decrees) shall bear interest at the rate of eight per centum per annum. Ch. 1562, Sec. 1, Dec. 12, 1866.

ARTICLE 4.

SUBROGATION OF SURETIES TO LIEN OF A JUDGMENT.

1605. (1177.) Rights of sureties.—Any person paying money as surety for the principal in any bond or note, which he has signed as surety, upon which judgment has been obtained, shall have the same right to control the said judgment and collect the same, with principal, interest and costs, as the plaintiff creditor would have had if the debt had not been paid. Ch. 765, Secs. 1, 2, Dec. 15 1855.

Such judgment, and execution thereon, shall have the same lien on property of the principal as though the surety were the original plaintiff.

ARTICLE 5.

INVALIDITY OF POWERS OF ATTORNEY TO CONFESS

1606. (1178.) Declaration of invalidity.—All powers of attorney for confessing or suffering judgment to pass by default or otherwise, and all general releases of error, made or to be made by any person whatsoever within this State, before such action brought, shall be absolutely null and void. Nov. 23, 1828. Sec. 67.

An agreement to confess is not invalid.—Shepard v. Kelly, 2 Fla., 634.

ARTICLE 6.

JUDGMENT AGAINST ONE IN SUIT AGAINST SEVERAL.

1607. (1179.) Proceedings. — Where suit is brought against two or more defendants, and the summons is served on one or more, but not on all, and the sheriff returns that the defendant not served does not reside in the county, the plaintiff may proceed against the defendant served, noting the fact of non-service on the absent defendant, and if he re- Ib., Sec. 12.

cover judgment, it may be entered up against the defendant served, noting the fact of non-service as aforesaid, which may be enforced against the property of the defendant against whom the judgment is entered, and the joint property of the defendants named in the writ; nothing herein shall be construed to prevent the plaintiff from bringing suit thereafter against any defendant not served for the same claim or demand; but the plaintiff shall have satisfaction of only one judgment rendered for the same cause of action. Or the plaintiff may, at his option, order additional originals and copies, to be directed to the sheriffs of the counties in which the other defendants reside to be served and returned according to law.

Plaintiff cannot take judgment as to one served and an alias as to others.—Doggett v. Jordan, 3 Fla., 214. Return of "not in county" insufficient.—Ib. Judgment against one in suit against two joint debtors served, is bar to action against others.—Pollak v. Hutchinson, 21 Fla., 128; Fennel v. Bradford, 2 Fla., 508; Hale v. Crowel's admr., 2 Fla., 534.

Miscellaneous Matters Concerning Judgments. Erroneous and Invalid Judgments.—Judgment for sum greater than that alleged is declared erroneous.—Cooper v. Livingston, 19 Fla., 686. Entry by clerk in vacation upon verdict rendered in term invalid.—Sedgwick v. Dawkins, 16 Fla., 198. Second of two inconsistent, final judgments in same case, void.—State, etc., Trustees, etc., v. J. P. & M. R. R. Co., 16 Fla., 708. When judgment void.—Ponder v. Mosely, 2 Fla., 207.

Foreign Judgments.—Jurisdiction in plea to suit on.—Drake v. Granger, 22 Fla., 348. Effect of.—Braswell v. Downs, 11 Fla., 62. Faith and credit to be given to, and proceedings upon.—Carter v. Bennett, 6 Fla., 214. Judgments as estoppel.—Thornton v. Eppes, 6 Fla., 546; Collins v. Mitchell, 5 Fla., 364.

Entry of Judgments Nunc Pro Tunc.—Judgment nunc pro tunc, relation of.—Jordan v. Petty, 5 Fla., 326.

Cancellation of judgments.—See Section 2500 upon cancellation of mortgages, etc.

Judgments against principals and sureties in appellate proceedings.—Section 1705.

CHAPTER XVIII.

MOTIONS FOR NEW TRIALS AND IN ARREST OF JUDGMENT.

ARTICLE 1.—Motions for new trials. Section..... 1608
2.—Motions in arrest of judgment. Sections.....1609-1611

ARTICLE 1.

MOTIONS FOR NEW TRIALS.

1608. (1180.) When and how to be made, and effect of. Every motion for a new trial shall be made by filing the motion and the reasons therefor in writing in the court, or by placing the motion and the reasons therefor on the motion docket, within four days after the verdict shall have been rendered, and during the same term; and such motions standing over from one term to another shall operate as a supersedeas only when so ordered by the court. And the entry of such motion shall not prevent the entry of judgment on the verdict.

Nov. 23, 1828, Sec. 52.

(See Ch. 5403, Appendix.)

New trial.—Bishop v. Taylor, 41 Fla., p. 77; 25 So. Rep. 287; 41 Fla., p. 107.

Practice connected with. Cannot be made after term.—Wm. H. T. v. State, 18 Fla., 883; P. & A. R. R. Co. v. State, 23 Fla., 546; 3 So. Rep. 158. Entry on motion docket is equivalent to filing.—Dupuis v. Thompson, 16 Fla., 69. Notice required before hearing.—Ib. Not a waiver of exceptions—which may be considered even though motion cannot.—Ib. Statement in, not evidence of facts stated.—Dukes v. State, 14 Fla., 499; Broward v. State, 9 Fla., 442; Livingston v. L'Engle, 22 Fla., 427. When bill in equity for new trial sustained.—Carter v. Bennett, 6 Fla., 214.

WHEN TO BE GRANTED.

For Errors of Court in Connection With Charge.—Because of misleading charge.—Meinhardt Bros. v. Mode, 25 Fla., 181; 5 So. Rep. 762. Charge calculated to mislead.—Friedenberg v. Robinson, 14 Fla., 130; Porter v. Ferguson, 4 Fla., 102. Charge confined to law applicable to case.—Long v. State, 11 Fla., 295; Porter v. Ferguson, 4 Fla., 102. Charge leaving case to opinion of jury.—Doggett v. Jordan, 2 Fla., 541. How charge should define function of jury.—Ib. Failure of judge to sign charge.—Friedenberg v. Robinson, 14 Fla., 130.

For Errors of Court in Connection With Instructions.—For failure of judge to sign and mark instructions.—Friedenberg v. Robinson, 14 Fla., 130. Giving instruction outside of issue, even though issue immaterial.—Hooker v. Johnson, 6 Fla., 730. For improperly qualifying instructions.—Young v. State, 24 Fla., 140; 3 So. Rep. 881. When evidence does not support verdict.—Clinch v. Canova, 33 Fla., 655; 15 So. Rep. 427; Grant v. State, 33 Fla., 291; 14 So. Rep. 757. When charge submits both law and facts to jury.—Lewton v. Howe, 35 Fla., 58; 16 So. Rep. 616. For error of court in admission and exclusion of evidence. Admission of illegal evidence.—Newton v. State, 21 Fla., 53. Prejudicial hearsay and immaterial evidence.—Gallagher v. State, 17 Fla., 370. Of improper evidence having a tendency to mislead.—Mills v. Joiner, 20 Fla., 479. Refusal to strike out improper evidence already admitted.—Horne v. Carter's admr., 20 Fla., 45. For error in refusing introduction of testimony after evidence closed.—Barber v. State, 5 Fla., 199. When verdict appears influenced by consideration other than the evi-

dence.—Kelly v. State, 39 Fla., 122; 22 So. Rep. 303; Doyle v. State, 39 Fla., 165; 22 So. Rep. 272; Browning v. State, 41 Fla., 271; 26 So. Rep. 639; Harrison v. State, 39 Fla., 514; 22 So. Rep. 747.

Under Ch. 4392, Acts 1895, a conviction of lower grade of homicide not to be set aside if evidence would sustain conviction of higher grade.—McCoy v. State, 40 Fla., 494; 24 So. Rep., 485. For communication of court with jury otherwise than in open court.—Holton v. State, 2 Fla., 476. For error of court in refusing to grant continuance.—Blige v. State, 20 Fla., 72. For disqualification, errors and irregularities of jury.—Because verdict against evidence.—Meinhardt Bros. v. Mode, 25 Fla., 181; 5 So. Rep. 672; Wilson v. Marks, 18 Fla., 322; Snowden v. State, 17 Fla., 386. Against conflicting evidence.—Duncan v. Jackson, 16 Fla., 338. Even though two juries find same way.—P. & G. R. R. Co. v. Nash, 12 Fla., 497. Against evidence.—Branch v. Wilson, 12 Fla., 543. Against weight of evidence.—Green v. State, 17 Fla., 669; Brevard v. Wilson, 12 Fla., 543. Against evidence and charge of court.—Hickox v. Anderson, 19 Fla., 615; Dennis v. State, 17 Fla., 387. Because verdict unsupported by evidence.—Marks v. Boone, 24 Fla., 177; 4 So. Rep. 532; Miller v. White, 23 Fla., 301; 2 So. Rep. 614; Davis v. State, 22 Fla., 663; Washington v. State, 21 Fla., 326; Small v. State, 20 Fla., 780; Sanderson v. Hagan, 7 Fla., 318; Joe v. State, 6 Fla., 591. Against law.—Gaines v. Forcheimer, 9 Fla., 265. Because verdict excessive in damages.—J., T. & K. W. R. R. Co. v. Roberts, 22 Fla., 324; Jenkins v. Lykes, 19 Fla., 148; Fla. R. R. Co. v. Gensler, 14 Fla., 122; Harrell v. Durrance, 9 Fla., 940. Because of disqualification of juror.—Hays v. McNealy, 16 Fla., 409. Disqualification from crime.—State v. Madoil, 12 Fla., 151. From official position.—Ladd v. State, 12 Fla., 215. For passion, prejudice, etc., of jury.—Schultz v. Pacific Ins. Co., 14 Fla., 73. Because of conduct of counsel.—For improper statement and language.—Newton v. State, 21 Fla., 53. When verdict is against the evidence.—Meinhardt v. Mode, 25 Fla., 181; 5 So. Rep. 672.

WHEN NOT GRANTED.

For Errors Assigned in Connection With Charge.—For erroneous charge when verdict conforms to law and evidence.—May's extrs. v. Seymour, 17 Fla., 725. For unprejudicial error in.—May v. Gamble, 14 Fla., 467. When jury is not misled.—Hooker v. Johnson, 10 Fla., 198. When substantial justice done by verdict.—Ib.; Milton v. Blackshear, 8 Fla., 161. For charge correct, when construed with reference to evidence on trial.—Robinson v. Barnett, 19 Fla., 670. For omission to give upon point when attention of court not called to omission.—Lungren v. Brownlie, 22 Fla., 491; Cato v. State, 9 Fla., 63; Carter v. Bennett, 4 Fla., 283. For erroneous charge not excepted to.—Frances v. State, 6 Fla., 306. When some errors of court, but verdict sustained by evidence.—Doggett v. Willey, 6 Fla., 482; Randall v. Paramore, 1 Fla., 409. For giving abstract, though erroneous charge.—Proctor v. Hart, 5 Fla., 465. Abstract and correct charge.—Belden v. Gray, 5 Fla., 504. For alleged error in charge when bill of exceptions does not include evidence relating to it.—Blige v. State, 20 Fla., 742; Proctor v. Hart, 5 Fla., 465. For error in charge cured by instruction.—Montgomery v. Knox, 23 Fla., 595; 3 So. Rep. 211.

For Errors Assigned in Connection With Instructions.—For refusal to give instructions abstract, hypothetical and not based on evidence.—Wilson v. Hunter, 25 Fla., 469; 6 So. Rep. 432; Jacksonville Street Car Co. v. Chappell, 21 Fla., 175; Washington v. State, 21 Fla., 328; Irvin v. State, 19 Fla., 872; Brown v. State, 18 Fla., 472; Whitner v. Hamlin, 12 Fla., 18; Judge v. Moore, 9 Fla., 269; Randall v. Paramore, 1 Fla., 409; Proctor v. Hart, 5 Fla., 495. Refusal to give misleading instructions.—Fla. Railway & Naviga-

tion Co. v. Webster, 25 Fla., 394; 5 So. Rep. 714. Embodying both correct and incorrect propositions of law.—Wooten v. State, 24 Fla., 335; 5 So. Rep. 39; Baker v. Chatfield, 23 Fla., 540; 1 So. Rep. 779; Metzger v. State, 18 Fla., 481. Indefinite instructions.—Union Bank v. Call, 5 Fla., 409. Based upon assumption of proof of material fact.—Carter v. State, 22 Fla., 552. Not beneficial to party asking.—Randall v. Paramore, 1 Fla., 409; Swinton v. Gondolfo, 4 Fla., 209. Already embraced in charge given.—Reddick v. State, 25 Fla., 112; 5 So. Rep. 704; Wooten v. State, 24 Fla., 335; 5 So. Rep. 39; Robinson v. Barnett, 19 Fla., 670; Southern Express Co. v. Van Meter, 17 Fla., 783; Sherman v. State, 17 Fla., 888; Nickels v. Mooring, 16 Fla., 76; Dixon v. State, 13 Fla., 636; Gladden v. State, 12 Fla., 562; Metzger v. State, 18 Fla., 481; Savage v. State, 18 Fla., 790. For omission to give where attention of court not called to omission.—Burroughs v. State, 17 Fla., 643. For properly qualifying.—Evans v. Gaines, 22 Fla., 476; Pensacola and Atlantic Railroad Company v. Atkinson, 20 Fla., 450. For harmless error in, when testimony sufficient.—Wooten v. State, 24 Fla., 335; 5 So. Rep. 39; Prescott v. Johnson, 8 Fla., 391. For error on trial not excepted to.—Stewart v. Mills, 18 Fla., 57. For refusal to give correct instructions, but when verdict conforms to law and evidence.—Mays' executors v. Seymour, 17 Fla., 725.

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Strauss, 21 Fla., 611; Willingham v. State, 21 Fla., 761; Metzger v. State, 18 Fla.; 481; Holland v. State, 39 Fla., 178; 22 So. Rep. 298; Wallace v. State, 41 Fla., 547; 26 So. Rep. 713. For error in assessing costs.—Broward v. Roche, 21 Fla., 465.

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A challenge for cause should be sustained by evidence.—Shurer v. State, 41 Fla., 630; 27 So. Rep. 36. Order of introduction of evidence in discretion of trial court.—Roberson v. State, 40 Fla., 509; 20 So. Rep. 474.

Because Verdict Alleged To Be Against Evidence When There Is Evidence To Sustain Verdict.—Anderson v. State, 24 Fla., 139; 3 So. Rep. 884; Temple v. F. L. & I. Co., 23 Fla., 400; 2 So. Rep. 773; Germania Insurance Co. v. Stone, 21 Fla., 555; Moses v. Gilchrist, 14 Fla., 325; Gaines v. Forcheimer, 9 Fla., 265. Because verdict against weight of evidence, when.—Hicks v. State, 25 Fla., 535; 6 So. Rep. 441; Robinson v. State, 24 Fla., 358; 5 So. Rep. 6; Broward v. Roche, 21 Fla., 465; Wilson v. Dibble, 14 Fla., 47. When in accordance with law and evidence.—Horsler v. Pensacola, 25 Fla., 40; 6 So. Rep. 61; Whitfield v. State, 25 Fla., 389; 5 So. Rep. 805. When testimony conflicting.—Robinson v. State, 24 Fla., 358; 5 So. Rep. 6; Glover v. State, 22 Fla., 493; Netso v. Foss, 21 Fla., 143; Maxwell v. Agnew, 21 Fla., 154. Except when.—McMurray v. Basnett, 19 Fla., 609; Bridier v. Yulee, 9 Fla., 481; Hancock v. Tucker, 8 Fla., 435; Sherman v. State, 17 Fla., 888; Nickels v. Mooring, 16 Fla., 76; Coker v. Hays, 16 Fla., 368; Coker v. Merritt, 16 Fla., 416; Mayo v. Hinote, 16 Fla., 673; Forcheimer v. Mayo, 16 Fla., 676; Tallahassee R. R. Co. v. Macon, 8 Fla., 299. Phrase "against" evidence defined.—Huling v. Florida Savings Bank, 19 Fla., 695. When two juries have concurred in verdict, when.—P. & G. R. R. Co. v. Nash, 12 Fla., 497. On ground of excessive verdict, when.—Clark v. Pope, 29 Fla., 238; 10 So.

Rep. 586. For matters connected with conduct of counsel for improper argument when not objected to.—Willingham v. State, 21 Fla., 761. On ground of newly discovered evidence.—On defective affidavit.—Sherman v. State, 17 Fla., 888. Unless vigilance apparent.—Simpson v. Daniels, 16 Fla., 677. And evidence not cumulative.—Ib.; Milton v. Blackshear, 8 Fla., 161. When evidence to impeach witness.—Judge v. Moore, 9 Fla., 269. What affidavit must contain.—Sherman v. State, 17 Fla., 888; Coker v. Merritt, 16 Fla., 416.

Generally.—For errors not excepted to.—Meinhardt v. Lilienthal, 17 Fla., 501; Coker v. Hays, 16 Fla., 368.

On Ground of Surprise.—When no evidence to sustain it.—Coker v. Hays, 16 Fla., 368.

On account of evidence received without objection.—Bishop v. Taylor, 41 Fla., 77; 25 So. Rep. 287. When verdict sustained by the evidence.—Bacon v. Green, 36 Fla., 325; 18 So. Rep. 870.

Recitals in motion, not evidence of the facts.—McNealy v. State, 17 Fla., 198; Richardson v. State, 28 Fla., 349; 9 So. Rep. 704.

ARTICLE 2.

MOTIONS IN ARREST OF JUDGMENT, ETC.

1609. (1181.) When and how to be made, and effect of. Motions in arrest of judgment shall be made within the same time, and in the same manner, and shall operate as a supersedeas only under the same circumstances as motions for new trials, and the entry thereof shall not prevent the entry of judgment upon the verdict. Ibid.

Not proper remedy for wrong verdict.—Bacon v. State, 22 Fla., 51. Only reaches error apparent on record.—Jordan v. State, Ib., 528. Further defined.—Sedgwick v. Dawkins, 18 Fla., 335. To arrest judgment for plaintiff, bad, if declaration good.—Hyer v. Vaughn, 18 Fla., 647. Cannot be changed to motion for new trial at subsequent term.—Sedgwick v. Dawkins, 16 Fla., 198.

1610. (1182.) Not to be granted for certain defects.—No judgment after the verdict of a jury, or an award of arbitrators, shall be stayed or reversed for any defects or fault in the original writ, or for a variance between the writ and declaration, or for any mispleading, insufficient pleading, or misjoining of the issue, or for any faulty count in the declaration where the same declaration contains one count which is good, for any informality in entering up the judgment by the clerk, or for any imperfection, omission, defect or lack of form in any pleading not affecting the merits of the cause, or for any irregularity in any writ of venire facias, or in the drawing, summoning or impaneling of petit jurors; unless the party making the objection was injured by the Ib., Sec. 54.

irregularity, or unless the objection was made before the returning of the verdict.

Applied in case of variance between writ and declaration.—Robinson v. Hartridge, 13 Fla., 501. Not for matter waived in pleadings.—Dawkins v. Smithwick, 4 Fla., 158. Does not cure the want of an issue.—Hopkins v. Burney, 2 Fla., 42. Cures want of statement of damages in declaration in assumpsit.—Broward v. Doggett, 2 Fla., 49.

Ibid.

1611. (1183.) Proceedings upon arrest of judgment.—When a judgment shall be arrested, the plaintiff shall not be compelled to bring a new suit, if the first writ or summons shall be sufficient, but the court may order new pleadings to commence where the error causing the arrest began, and the party committing it shall be liable to the costs occasioned thereby.

Ch. 1096, Sec. 48, Feb. 8, 1861.

Or if the motion for arrest, or for judgment non obstante veredicto, be because of the alleged non-averment of some alleged material fact, or allegation or other cause, the party whose pleading is alleged or adjudged to be therein defective may amend by inserting the omitted defect; and such amendment may be pleaded to by the opposite party within such time as the court may order, and the proceedings for the trial of any issue on such pleadings shall be the same as in ordinary actions.

Judgment non obstante veredicto when not given.—Hyer v. Vaughn, 18 Fla., 647. Repleader when not ordered.—Ib.

Cannot be made after term.—P. & I. R. R. Co. v. State, 23 Fla., 54; 3 So. Rep. 158.

CHAPTER XIX.

OF EXECUTIONS.

ARTICLE 1.—Generally.

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ARTICLE 1.

GENERALLY.

1612. (1184.) Ca. Sa. on judgment abolished. — In no case shall a capias ad satisfaciendum be issued upon a judgment, nor shall the body of any defendant be subject to arrest or confinement for the payment of money, except it be for fines imposed by lawful authority. Nov. 23, 1828, Sec. 53.

1613. (1185.) Right to, and life of executions. — The plaintiff shall be entitled to his execution at any time within three years after the rendition of any judgment or decree, and, upon the issuance of his execution, shall be entitled to renew the same upon the return to the clerk's office of the original execution, from time to time for twenty years, unless the same be sooner satisfied. March 15, 1844 Sec. 8.

Lien of judgment not affected by want of right to an execution.—Howe v. Robinson, 20 Fla., 352. Sci. fa. to revive does not lie against dissolved corporation, when.—Ib. Execution can only issue on judgment or order fixing liability of defendant.—Davidson v. Floyd, 15 Fla., 667; Davidson v. Seegar, 15 Fla., 671. Service sci. fa. quare, etc.—Effect of actual service and of two returns nihil.—Barrow v. Bailey, 5 Fla., 9. Issued in three years may be renewed without sci. fa. upon return of and filing writ.—Jordan v. Petty, 5 Fla., 326. Sci. fa. to revive after death of defendant.—Union Bank v. Powell, 3 Fla., 175. Sci. fa. to revive judgment, definition, form, practice and judgment.—Brown v. Harley, 2 Fla., 159. Execution sued out after time voidable only by defendant.—Mosely v. Edwards, 2 Fla., 429. Not impeachable collaterally.—Ib. May be amended after sale under it.—Adams v. Higgins, 23 Fla., 13; 1 So. Rep. 321.

1614. (1186.) Teste and direction of.—All writs of execution shall bear date as of the day on which they shall be issued, and shall be directed to all and every the sheriffs of the State of Florida, and shall be of full force throughout the State. Feb. 17, 1833, Sec. 1.

1615. (1187.) Time of issuance.—Writs of fieri facias upon judgment shall issue upon request of the plaintiff, his agent or attorney, immediately after judgment rendered.

1616. (1188.) Return of, and collection under.—All writs of fieri facias shall be made returnable when satisfied, and the officer to whom the same shall come shall proceed to collect the amount thereof by the next succeeding term of the court after the receipt of such execution if the same can be done consistently with law; and shall, on the first day of every succeeding term of the court after the receipt of the execution, make a return of his doings thereon in a book to Mch. 15, 1844, Sec. 2.

be kept in the records of the court issuing the same, and all receipts shall be endorsed on the execution.

In force till satisfied. Duty of sheriff as to return. Effect of return before satisfaction.—Mercer v. Hooker, 5 Fla., 277.—Practice as to ruling sheriff in case of conflicting executions.—Willis v. Shepard, 2 Fla., 397. Right of plaintiff to require return of writ.—McLeod v. Ward, 9 Fla., 18.

Ib., Sec. 7.

1617. (1189.) Execution against principals and sureties. Where there are executions against principals and sureties, or an execution against a principal and surety or sureties, it shall be the duty of the sheriff or other officer to make the money out of the property of the principal, unless he be insolvent or has no property, in which case the execution may proceed against the property of the sureties.

Applied by analogy in equity.—Hendry v. Clardy, 8 Fla., 77.

Ib., Sec. 1; Ch. 44, Sec. 1, Dec. 25 1845; Ch 3917, May 16, 1889.

1618. (1190.) Property subject to levy. — Lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, shall be subject to levy and sale under execution.

Ch. 4725, Acts of 1899.

1619. Executions.—Executions on judgments of county courts shall be a lien and may be levied upon real estate subject to levy, in any county, when a transcript of the judgment of said courts is filed and recorded in the office of the clerk of the circuit court of said county, and the real estate so levied upon may be sold under such executions in the same manner as under executions from the circuit courts.

Equitable estate not reached by execution.—Mayer v. Wilkins, 37 Fla., 244; 17 So. Rep. 632.

RELEASE OF PROPERTY BY DEFENDANT.

Sec. 1191, Rev. Stat., 1892.

1620. (1191.) By substitution of other property.—The defendant in execution, his agent or attorney, shall at all times have it in his power to release any property which may have been levied on by surrendering other property of a value equivalent, in the opinion of the officer levying the execution, to that released.

Sec. 1192, Ib.

1621. (1192.) By giving bond.—If a defendant in execution desires to retake into his possession any property levied upon he may do so, by executing a bond with two good and sufficient sureties payable to the plaintiff, to be approved by the officer making the levy, in a sum double the value of the property retaken, which value shall be fixed by the officer holding the execution, conditioned for the forthcoming of the property retaken on the day of sale designated in said bond.

1622. (1193.) Failure to produce property and its effect. Should the execution remain unpaid, and the parties to the bond fail to produce such property by the day specified, said bond shall be returned to the court from which the execution issued, as forfeited; and the clerk, or the court if it has no clerk, shall enter up judgment forthwith against the sureties for the value fixed as aforesaid of the property so bonded, or if the value of the property exceed the amount of the execution, then for the amount of the execution, and execution shall issue therefor. Such proceedings shall not affect the liability of the principal upon the original judgment. Sec. 1193, Ib.

1623. (1194.) No bonding of property on second execution.—No bonds, as hereinbefore provided, shall be allowed to be given for property seized upon the execution on the judgment upon the forfeited bond. Ch. 727, Sec. 1, Dec. 14, 1855.

Applied.—Robinson v. Yon, 8 Fla., 351.

1624. (1195.) Upon affidavit of illegality, and bond.—If any execution shall issue illegally, the defendant in execution, his agent or attorney, may procure a stay of the same by making and delivering to the officer having the execution an affidavit stating the illegality and whether any part of the execution be due, and a bond payable to the plaintiff with two good and sufficient sureties in double the amount of the execution or the part of which a stay is sought. Upon receipt of such affidavit and bond the officer shall stay any proceeding on the execution and return the bond and affidavit to the court from which the execution issued, and such court shall pass upon the question of illegality as soon as possible. If the execution be adjudged illegal in any part the court shall make an order staying it as to such part, but if it be adjudged legal in whole or in part, the court shall (or if it has a clerk, shall direct such clerk to) enter up judgment against the principal and sureties on such bond for the amount of so much of the execution as shall be adjudged to be legal, and execution shall forthwith issue thereon. Feb. 15, 1834, Secs. 2 and 3.

Allegations equivalent to, "issued illegally."—Mathews v. Hillyer, 17 Fla., 498. Duty of courts as to passing upon illegality.—Ib. Insufficient allegation.—Mitchell v. Duncan, 7 Fla., 13.—Instance of sufficient bond.—Ib. Giving bond essential.—Griffin v. LaCourse, 31 Fla., 125; 12 So. Rep. 665. When affidavit and bond filed court shall hear proofs.—Houston v. Bradford, 35 Fla., 490; 17 So. Rep. 664.

1625. (1196.) Upon motion.—The court before which an execution is returnable may, on a motion and notice to the adverse party, for good cause, upon such terms as the March 15, 1844. Sec. 6.

court may impose, direct a stay of the same, and the suspension of proceedings thereon.

Powers of court.—Robinson v. Yon, 8 Fla., 351.

CLAIMS BY THIRD PERSONS.

Feb. 17, 1833, Sec. 9; March 15, 1844, Sec. 1.

1626. (1197.) Procuring possession of the property.—If any person other than the defendant in execution shall claim any property levied upon, he may obtain possession of such property by filing with the officer having such execution an affidavit made by himself, his agent or attorney, that the property claimed by him belongs to him, and a bond payable to the plaintiff with two good and sufficient sureties to be approved by such officer in double the value of the goods claimed, such value to be fixed by the officer, conditioned to deliver said goods and chattels upon demand of said officer if the same shall be adjudged to be the property of the defendant in execution, and to pay the plaintiff all damages which the jury on the trial of the right of property may find in his favor if it should appear to the jury that such claim was interposed for the purpose of delay.

Affidavit must state individual names of partners claimants.—Richardson v. Smith, 21 Fla., 336.

Feb. 17, 1833, Secs. 9 and 10.

1627. (1198.) Duty of officer.—Upon receipt of such bond and affidavit, the said officer shall deliver the property to the claimant and desist from any further proceedings under such levy until the right of property shall have been tried; and shall, unless directed in writing by the plaintiff in execution, his agent or attorney, to dismiss the levy and levy upon other property of the defendant in execution, return said execution to the court whence it issued, together with such affidavit and bond.

Execution not a part of pleadings; presumption as to return.—Betton v. Willis, 1 Fla., 226.

Ib., Sec. 10.

1628. (1199.) Trial of the right of property.—At the next term of said court after the return a jury shall be sworn to try the right of property, and if the verdict be in favor of the plaintiff and it appear to the jury that the claim was interposed for delay, to award the plaintiff such damage as it may think reasonable, not exceeding twenty per cent.; and, if the claimant shall three days before the trial deny in writing under oath filed in court, the correctness of the appraisement of the value of the property by the officer levying the execution, and the verdict be in favor of the plaintiff, to fix the value of each item thereof, or of such items thereof as may be covered by such denial.

Oath to jury is "to try the right of property," and not 'to try the issue joined."—Betton v. Willis, 1 Fla., 226.

1629. (1200.) Judgment.—Upon the verdict of the jury, the court shall enter judgment deciding the right of property, and if the verdict is for plaintiff, awarding a recovery by the plaintiff from the defendant and his sureties, of the value (as fixed by the officer, or as fixed by the jury if fixed by it) of such parts of the property as the jury may have found subject to execution, and awarding separately such damages as the jury may have awarded, and of all costs attending the presentation and trial of the claim.

In claim cases the issue is upon the liability of the property to the plaintiff's execution.—Baars v. Creary, 23 Fla., 311; 2 So. Rep. 662. And the legality of the execution is not in issue.—Ib.

1630. (1201.) Execution and satisfaction of judgment. If the execution issued upon such judgment be not paid, it shall be satisfied in the usual manner, unless upon demand of the officer holding it upon the principal and sureties in the claim bond, they shall deliver to him the property released under the claim bond and pay to him the damages and costs awarded to the plaintiff by the jury. If the property be returned to the officer, but the damages and costs shall not be paid, the execution shall be enforced for such damages and costs. If part only of the property be returned to him, the execution shall be enforced for the value, fixed as aforesaid, of that not returned. All property returned shall be sold under the original execution against the original defendant.

Purpose of and issues under.—Baars v. Creary, 23 Fla., 311; 2 So. Rep. 662; Price v. Sanchez, 8 Fla., 136. Separate claim to each execution.—Moody v. Howe, 22 Fla., 309; Ib., 314.

Lien of execution continues after death of execution debtor.—Kimball v. Jenkins, 11 Fla., 111. When execution becomes lien on personal property. Lien defined.—Love v. Williams, 4 Fla., 126. Effect of sale of personal property under junior execution.—Ib. Rights of senior execution creditor.—Ib. Execution in name of administrator before he is made a party to judgment, irregular.—Brett v. Ming, 1 Fla., 477. Court cannot direct new levy of execution on specific propery because third person has an equity in that levied on.—Clonts v. Ritch, 12 Fla., 633.

SALE OF PROPERTY LEVIED UPON.

1631. (1202.) Notice of sale.—Notice of all sales under execution shall be given by advertisement once each week for four successive weeks in a newspaper published in the county in which the sale is to take place, or if there is no newspaper published in the county, by posting notices at the door of the court house of the county, and at three other public places in the county, for thirty days; but the time of such notice may be shortened in the discretion of the court from which the execution issued, upon affidavit that the

Ib., Sec. 3.

property to be sold is subject to decay, and will not sell for its full value if held for a period of thirty days.

Ch. 3256, Sec. 1, Feb. 25, 1881.

1632. (1203.) Time of sale.—All sales of property under legal process shall take place between the hours of 11 o'clock in the forenoon and 2 o'clock in the afternoon of the first Monday in every month, and shall continue from day to day until such property be disposed of.

Presumption in favor of regularity.—Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871.

Feb. 17, 1833, Sec. 3.

1633. (1204.) Place of sale.—All real and personal property levied upon under execution shall be exposed to sale at the court house door of the county in which the real estate shall be situated, or the personal property shall have been seized. If, however, the property to be sold shall consist of merchandise or other property not easily movable, or movable at great relative expense, the sale shall take place where the property was when taken possession of under the levy.

Sale set aside for inadequate price.—Lawyers Co-operative Co. v. Bennett, 34 Fla., 302, 16 So. Rep. 185.

Ib., Sec. 6.

1634. (1205.) Bill of sale, or deed to property sold. Whenever a sale shall be made by virtue of any execution, the officer making the sale shall, on payment of the purchase money and the cost of the deed or bill of sale, execute to the purchaser a deed of conveyance or bill of sale of the property sold.

Sale not vitiated by amendable defect in execution.—Adams v. Higgins, 23 Fla., 13; 1 So. Rep. 321. Order of sale of incumbered and unincumbered property.—Ritch v. Eichelberger, 13 Fla., 16.

Execution Sale. How far innocent purchaser protected.—Rusk et al. v. Reel, 36 Fla., 418; 18 So. Rep. 582; Rogers & Co. v. Munnerlyn et al., 36 Fla., 591; 18 So. Rep. 669.

Sec. 1, Ch. 4914 Acts of 1901.

1635. Mandamus.—Wherever it shall be made to appear to the circuit judge by a petition, sworn to by the plaintiff in execution, his agent or attorney, that there is an unsatisfied execution in his favor in the hands of an officer whose duty it is to make levy of such execution, and that such officer refuses to make levy of the same upon property liable thereto, and upon which it is his duty to make such levy, the plaintiff shall be entitled to an alternative writ of mandamus requiring such officer to levy such execution and collect the amount thereof, or to show cause why he refuses so to do, and the cause shall then proceed to final hearing as in other mandamus proceedings.

DISPOSITION OF PROCEEDS OF EXECUTION.

1636. (1206.) Payment to parties. — All money made upon execution in this State shall be paid to the party or his attorney in whose favor execution shall have been issued. And the receipt of said attorney shall release and fully acquit the officer so paying over the money as aforesaid. Where the names of more than one attorney shall appear upon the records of the court, the money shall be paid to the attorney who originally commenced the suit, or to him who made the original defense.

When property sold under execution shall bring more than the amount of the execution, the surplus shall without delay be handed over to the defendant. Nov. 23, 1826, Sec. 57.

1637. (1207.) Failure to pay over money collected.—If any officer collecting money under execution shall fail or refuse to pay it over within thirty days after it shall have been received by him, or within ten days after demand made by the plaintiff or his attorney of record, he shall be liable to pay the same and twenty per cent. damages, to be recovered by motion in court. Feb. 17, 1853, Sec. 7.

ARTICLE 2.

EXECUTIONS AGAINST EQUITIES OF REDEMPTION.

1638. (1208.) Discovery of value of equity.—Upon application made by the party causing a levy upon an equity of redemption, the court from which the execution issued shall cause the mortgagor, mortgagee, and all other persons whom the said mortgagor or mortgagee shall state upon oath to be interested in said mortgaged property so levied upon, to come into court and answer upon oath what amount remains due and owing upon said mortgage, what amount has been paid, and to whom and when paid, that the value of said equity or legal right of redemption may be ascertained before the same shall be sold. Ch. 44, Sec. 2, Dec. 23, 1845.

1639. (1209.) Protection of mortgagee in personal property.—The officer selling the equity of redemption in personal property shall require of the purchaser of such equity a bond with two good and sufficient sureties, to be approved by him, in a sum double the amount of the value to Ib., Sec. 3.

be placed by him upon each item of the personal property so levied upon and sold, payable to the mortgagee, and conditioned that such property shall not be removed beyond the State, and that it shall be forthcoming to answer any judgment or decree of foreclosure made against it.

ARTICLE 3.

EXECUTIONS AGAINST CORPORATIONS.

Feb. 11, 1834, Sec. 4.

1640. (1210.) Fi. fa. obtainable. — Upon any judgment against any corporation, a plaintiff may sue out a fieri facias, and the writ of fieri facias may be levied as well on the current money as on the goods and chattels, lands and tenements of said corporation.

Ch. 1870, Sec. 1, Feb. 17, 1872.

1641. (1211.) Equitable executions by appointment of receiver.—If such writ cannot be satisfied in whole or in part, for want of property of the defendant subject to levy and sale out of which to satisfy the same, upon petition of the judgment creditor, or of his agent or attorney, the circuit court sitting in chancery within whose circuit such corporation may have been doing business, or in which any of its effects are to be found, may by order sequestrate the property, things in action, goods and chattels, of such corporation for the purpose of enforcing such judgment, and may appoint a receiver for the same, and the receiver so appointed shall be subject to the rules prescribed by law for receivers of the property of other judgment debtors. His power shall extend throughout the State.

ARTICLE 4.

AGAINST STOCK IN CORPORATIONS.

What shares of stock subject to. Section..... 1642
Levy, and proceedings thereon. Sections.....1643-1644
Stock owned in corporations, how ascertained from officers of corporations. Sections.....1645-1646
Effect of levy. Section..... 1647
Sale, manner, etc. Section..... 1648

Ch. 3917, Sec. 1, May 16, 1889.

1642. (1212.) What shares of stock subject to levy. Shares of stock in any corporation incorporated by the laws of this State shall be subject to levy of attachments and

executions, and to sale under executions on judgments or decrees of any court in this State.

LEVY AND PROCEEDINGS THEREON.

1643. (1213.) Manner of levy.—Attachments or executions may be levied on such shares by the sheriff, or other officer holding such process, exhibiting the same to the president, vice-president, general manager, or other chief officer, or to the officer having custody of the stock books or transfer books of the corporation in which the attachment or judgment debtor may own shares of stock, and by informing such officer that a levy is thereby made upon such debtor's shares of stock in such a corporation, and such sheriff or other officer shall endorse such levy on such proceeds. Ib., Sec. 2.

1644. (1214.) Officer may require exhibit of stock.—At the time of making such levy as aforesaid, the officer holding such process shall demand of the officer of the corporation to whom the process shall be exhibited a statement in writing of the number of shares of stock owned by such debtor in said corporation, together with the amount still due thereon. It shall be the duty of the said officer to furnish said statement at once to the said sheriff or other officer (who shall endorse the same on the said process); and any officer of any corporation refusing or failing to make such statement upon such demand, or making an untrue statement in response to such demand, shall be guilty of a misdemeanor, and shall, upon conviction, be fined a sum of not less than one hundred dollars or be imprisoned in the county jail not less than ten days. Ib., Sec. 3.

1645. (1215.) Stock owned in corporations, how ascertained.—If such attachment or execution creditor shall believe that the debtor owns shares of stock in said corporation at the time of the levy aforesaid, which do not appear in the answer of the officers of the corporation to the demand of the sheriff or other officer holding the process to belong to the said debtor, he may propound interrogatories to the officers of said corporation or any of them, and to the said debtor, touching the ownership of any shares of stock in said corporation by said debtor at the time of said levy; and the persons to whom such interrogatories are propounded shall be required to file their answers under oath to the same within ten days in the office of the clerk of the circuit court of said county. And if any person shall refuse to answer such interrogatories, or shall answer any of them un- Ib., Sec. 4.

truly, he shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars or be imprisoned not less than ten days in the county jail. If the answers to said interrogatories shall state the ownership by the said debtor of stock in said corporation not disclosed by the answers of the officers of the said corporation made under Section 1825, the sheriff or other officer holding the said process shall endorse thereon a description of said stock.

Ib., Sec. 5.

1646. (1216.) Creditor to furnish description of stock. If the creditor shall believe the answers of the officers of such corporation to the sheriff or other officer holding the process as aforesaid, and the answers of such officers of the corporation and the debtor to said interrogatories, to state untruly the stock owned by such debtors, he may furnish to the sheriff or other officer holding the process a description of the stock which he believes the debtor to own; and it shall be the duty of the sheriff or other officer to proceed to sell the debtor's interest in such stock as hereinafter provided.

Ib., Sec. 6.

1647. (1217.) Effect of levy.—From the time of the levy of said process as provided in Section 1824, all the shares owned by the said debtor in such corporation, no matter how the description of it may be thereafter ascertained, shall be bound thereby, and no transfer of the same not then entered upon the transfer book of the said corporation shall be valid and effectual as against the levy of the said process. And if any person shall antedate or procure to be antedated any entry upon the books of said corporation for the purpose of avoiding the effect of the said levy he shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred dollars or imprisoned in the county jail not less than ten days.

Ib., Sec. 7.

1648. (1218.) Sale and manner of.—Shares of stock levied upon as hereinbefore provided shall be sold in the same manner as other property levied upon. The notice of such sale shall contain a statement of the number of shares to be sold, the corporation in which said shares are held, the amount paid in thereon, and the amount unpaid. The sheriff or other officer conducting said sale shall execute to the purchaser thereat a bill of sale of said shares, and such bill of sale shall vest in the purchaser all the title of the judgment debtor; and upon the presentation of such bill of sale to the secretary or other officer controlling the transfer

books of such corporation, it shall be his duty to transfer the said stock from the judgment debtor to the purchaser.

Executions against stockholders for corporate debts. See Section 2677.

CHAPTER XX.

LIS PENDENS.

1649. (1220.) Beginning and requirements of.—No suit at law or in equity shall operate as a lis pendens as to any property involved therein until there shall have been filed in the office of the clerk of the circuit court of the county where the property is situated, and shall have been recorded by him in a book to be kept by him for the purpose, a notice of the institution of such suit, containing the names of the parties, the time of the institution of the suit, the name of the court in which it is pending, a description of the property involved, and a statement of the relief sought as to such property.

Liability of purchaser pendente lite.—Leuders v. Thomas, 35 Fla., 518; 17 So. Rep. 633; Elizabethport Cordage Co. v. Whitlock, 37 Fla., 190; 20 So. Rep. 255; Hayden v. Thrasher, 28 Fla., 162; 9 So. Rep. 855.

CHAPTER XXI.

ARBITRATIONS.

Parties, who may submit to. Section 1650
How made a rule of court. Section 1651
Powers of arbitrators, and proceedings. Section 1652
Compensation of arbitrators. Section 1653
Award, form of. Section 1654
Setting aside award, proceedings for. Sections 1655-1657
Judgment upon award. Section 1658

1650. (1221.) Who may submit to.—All parties to any controversy before or after suit thereupon may make a rule of court of any arbitration to which they may desire to submit such controversy. Guardians and executors and administrators shall have such power in matters relating to the trusts committed to them respectively. Nov. 17, 1828,, Secs. 1, 2 8, 9.

However, any party to a submission not made a rule of court may seek relief in the courts.

Ib., Secs. 1 and 2.

1651. (1222.) How made a rule of court.—An arbitration may be made a rule of court by the parties filing in the court which would have jurisdiction of the controversy if it were not submitted to arbitration, a statement in writing signed by each party of the agreement of matters to be submitted to arbitration, and the name of the arbitrator or arbitrators, and an umpire selected by them. The clerk of the court (or the court if it have no clerk), shall record said statement in the minutes of the court, and thereupon the arbitrator or arbitrators and umpire shall have the powers hereinafter specified.

Judgment can not be entered except after suit or written agreement to make award rule of court.—Coxetter v. Huertas, 14 Fla,, 270. Must be signed by both parties.—O'Bryan v. Reed, 2 Fla., 448. After award is open cannot by consent be made a rule of court.—Ib.

Ib., Sec. 7.

1652. (1223.) Powers of arbitrators, and proceedings. The arbitrator or arbitrators, and umpire appointed as aforesaid, shall, before entering upon the investigation of the matter submitted to them, be severally sworn before some judge or justice of the peace faithfully and diligently to execute the trust committed by the submission; and the examination of all witnesses before the said arbitrator or arbitrators or umpire shall be under oath, and if the parties themselves be examined such examination shall also be under oath, and in the presence of each other; and the said arbitrators or either of them shall be and they are hereby authorized and empowered to issue subpoenas to compel the attendance of witnesses under the same regulations as the clerks of the circuit courts of this State, which said subpoenas shall be served by the sheriff or any constable of the county, and shall be obeyed by the witnesses in the same manner as subpoenas issued from any court within this State.

Umpire may accept facts agreed upon by arbitrators except when.—Blood v. Shine, 2 Fla., 127.

Ib., Sec. 10.

1653. (1224.) Compensation of arbitrators, officers and witnesses.—The arbitrators and umpire shall be allowed for their services two dollars and fifty cents per day; the officers of court the usual fees for similar services in the court of which the arbitration has been made a rule; and the witnesses, one dollar per day for each day of attendance and the usual mileage.

1654. (1225.) Form of award.—The award shall be in writing, signed by a majority of the arbitrators, or arbitrators and umpire, shall state the adjudication in full, and shall be filed and recorded in the court of which the arbitration is

a rule. And the clerk of such court (or the court, if it have no clerk) shall give notice of the entry of the award to the persons against whom the award is rendered.

Award of payment of specific sum sufficient without directing release.—Blood v. Shine, 2 Fla., 127. Need not in terms, if it does in fact decide all matters submitted.—Ib. Money payable by terms of award if no time is fixed, is payable immediately.—Ib.

SETTING ASIDE THE AWARD.

1655. (1226.) Application for, time and manner. — Any party to an award may, within thirty days after notice of the entry of the award of record, apply to the court of which the submission is a rule, by motion, to set aside the award, on giving the opposite party or his attorney ten days' previous notice of such intended application and of the grounds on which the motion will be made. Ib., Sec. 4.

1656. (1227.) Grounds for setting aside.—An award of any arbitration duly appointed, made pursuant to the said submission, shall be set aside by the court only on the ground of fraud, corruption, gross negligence or misbehavior of one or more arbitrators or umpire who may have signed the award, or of evident mistake acknowledged by the arbitrators or umpire. Ib., Sec. 8.

Or for mistakes, etc., acknowledged by party, seems.—O'Bryan v. Reed, 2 Fla., 448.

1657. (1228.) Testimony upon application to set aside. The court upon the hearing of such motion shall require affidavit of the facts constituting the ground on which the motion is made, and shall also, if offered, receive affidavit on the other side; but no parol testimony shall be admitted on either side. Ib., Sec. 5.

JUDGMENT.

1658. (1229.) Judgment upon award.—If any award be entered of record, so much thereof as decrees the payment of money by either party shall have the force and effect of a judgment from the day of entering said award, upon which execution may be issued as in cases of judgment duly entered; and so far as the award relates to the performance of any other lawful act, the party failing to comply with said award shall be considered in contempt, and by the order of court shall be committed to prison, there to remain without Ib., Sec. 6.

bail until he shall comply with the order of the court in the premises.

Every reasonable intendment is in favor of award.—Blood v. Shine, 2 Fla., 127. Appointment not collaterally impeachable.—Rushing v. Thompson's extrs., 20 Fla., 583.

Qualifications of arbitrators.—Howard v. P. & A. R. R. Co., 24 Fla., 560; 5 So. Rep. 356. Award binding upon parties receiving payment.—Ib.

CHAPTER XXII.

REFERENCES.

Right to a reference. Section.....1659
Powers and duties of a referee. Section.....1660
Motions for new trial. Section.....1661
Judgment of referee. Section.....1662
Appeals and writs of error. Section.....1663
Compensation of referee. Section.....1664
Compensation of witnesses and officers. Section.....1665

1659. (1230.) Right to a reference.—Any civil cause may be tried before a practicing attorney as referee upon the application of the parties, and an order from the court in whose jurisdiction the case may be authorizing such trial and appointing such referee.

1660. (1231.) Powers and duties of a referee.—

Ch. 3122, Sec. 1, March 11, 1879.

1. To Subpoena Witnesses and Take Depositions.—Every referee shall have the same power to subpoena witnesses and parties to testify, and to compel their attendance, and to take depositions, as the court making the reference may have in like cases.

Ib., Sec. 7.

2. To Allow Amendments.—He shall have the same power over the pleadings as to filing additional pleadings, or striking out or amending the pleadings, as the court making the reference may have.

Ib. Sec. 2.

3. To Fix and Adjourn Day of Trial.—He may fix the day for the trial, and may adjourn the trial for cause shown; and if he shall unreasonably delay the trial or determination of a case, the court shall revoke the order appointing him.

Ib., Sec. 4.

4. To Keep and File Record of Case.—He shall keep a complete record of the case, including the evidence taken, and such record shall be filed, with the papers in the case, in the court making the reference.

5. To Determine Motions for New Trials, etc.—He may hear and determine motions for new trials, re-hearing, arrest of judgment, or reformation or alteration of judgment, to the same extent and with like powers as the court by which the reference is made. Ib., Sec. 3.

6. To Enter Judgment.—He shall have power to enter final judgment or decree with the effect hereinafter prescribed. Ibid.

May be appointed and render final decree after decree pro confesso.—Rushing v. Thompson's extrs., 20 Fla., 583. Must give notice of the hearing.—LeBaron v. Overstreet, 39 Fla., p. 628; 23 So. Rep. 22.

7. To Give Notice of His Findings and Judgment.—He shall, upon arriving at a judgment, give notice in writing of the same to both parties. Ibid.

What order not a limitation upon the power of referee to amend the pleadings.—J. T. & K. W. Ry. Co. v. Lockwood, 33 Fla., 573; 15 So. Rep. 327. Reference does not transfer case to another court or tribunal.—State ex rel. v. Call, 36 Fla., 505; 18 So. Rep. 771.

The finding of a referee on facts given same consideration as verdict of jury.—Moulie v. Hughes, 28 Fla., 617; 10 So. Rep. 94; Marshall v. Brumby, 25 Fla., 619; 6 So. Rep. 480; Tischler v. Apple, 30 Fla., 132; 11 So. Rep. 273; J., T. & K. W. Ry. Co. v. Garrison, 30 Fla., 567; 11 So. Rep. 932. Need not file his finding until he disposes of motion for new trial.—Arnau v. First National Bank, 36 Fla., 398; 11 So. Rep. 786.

Motion for new trial evidence that movant had notice of filing referee's report.—St. Johns, etc., Ry. Co. v. Shally, 33 Fla., 397; 14 So. Rep. 890; same v. Ransom, 33 Fla., 406; 14 So. Rep. 892.

When judgment of referee void.—Webster v. Powell, 43 Fla., 432; 30 So. Rep. 654.

Referee does not take judicial notice of depositions filed in case, but not offered before him.—Myers v. Roberts, 35 Fla., 255; 17 So. Rep. 358.

No jurisdiction of equitable matters.—Price v. Drew, 18 Fla., 670.

Judge of the impeachment of witnesses and other facts.—Richardson v. Russ, 14 Fla., 63.

Remedy for irregular appointment.—Rushing v. Thompson, 20 Fla., 583.

1661. (1232.) Motions for new trial, etc.—

1. When To Be Made.—All motions for new trials, rehearings, in arrest of judgment, or for reformation or alteration of the same, shall be made within ten days after receipt of the notice provided for in the preceding section, Paragraph 7. Ibid.

2. When To Be Heard.—Motions mentioned in the preceding paragraph must be brought to a hearing before the referee within ten days after the motion shall be filed with him, upon due notice to the opposite parties, but the referee Ib., Sec. 6.

may, by an order, enlarge the time for such hearing, and may specify what notice shall be given of such hearing.

Ibid.

3. How Affected by Death, etc., of Referee.—In case of the absence or death of the referee after the notice of his findings, so that the parties cannot be heard before him upon such motions within the time fixed by law, the parties may apply to the court for such order or proceeding as might be allowed by the referee.

Motion not amendable after filing of order refusing.—Mundee v. Freeman, 23 Fla., 529; 3 So. Rep. 153.

Ib., Secs, 4 and 10.

1662. (1233.) Judgment of referee.—If there shall be none of the motions hereinbefore mentioned, or if the said motions shall have been made and denied, or whenever the judgment of the referee shall have been finally arrived at by him, he shall file in the court by which the reference was made his decision and judgment, and all papers used before him, and the record of the case as kept by him, and such judgment or decree shall be entered in the minutes of the court, and shall be of like force and effect as other judgments or decrees of said court.

When judgment final.—Read v. Gooding, 20 Fla., 773; Stewart v. Mathews, 19 Fla., 752; Robinson v. Hemstreet, 21 Fla., 342.

1663. (1234.) Appeals and writs of error.—

Ib., Sec. 8.

1. Right To and How Taken.—Any party to such judgment or decree may appeal, or have a writ of error, as a judgment or decree may be reviewable by the one or the other proceeding therefrom, to the appropriate appellate court, and such appeal or writ of error shall be taken and prosecuted in like manner, and with like effect, as appeals and writs of error from the court making the reference, and subject to all the provisions of law applicable to such appeals and writs of error.

Lies only after final judgment.—Demens v. Poyntz, 25 Fla., 654; 6 So. Rep. 261. What is not such judgment.—Ib.

Ib., Sec. 5.

2. Bills of Exceptions.—Bills of exceptions in cases at law may be settled before the referee, according to the practice prevailing in the court making the reference, within a time to be fixed by him, and shall be signed by the referee, and when filed shall become a part of the record of the cause for the purpose of review upon writ of error.

What considered bill of exceptions.—Stewart v. Matthews, 19 Fla., 752.

Ib., Sec. 9.

3. Reversals, etc., of Judgment.—Upon the reversal or modification of such judgment or decree by the appellate court, the court from which the appeal was taken may refer

the cause to the same or another referee, to be agreed upon by the parties, or may proceed with the same as in other causes before the court.

Judgment of referee on conflicting testimony and on questions of fact sustained.—Eppinger v. Canepa, 20 Fla., 262; McClenny v. Hubbard, 20 Fla., 541; Wharton v. Hammond, 20 Fla., 954; Holland v. Holmes, 14 Fla., 390; Richardson v. Russ, 14 Fla., 462. Reversed for taking cognizance at law of an equitable proceeding.—Price v. Drew, 18 Fla., 670.

1664. (1235.) Compensation of referee.—The referee shall receive five dollars for each day he shall sit to hear the cause, and shall receive like pay for not exceeding two days for deliberation and judgment after the cause is submitted for decision; ten cents per folio of one hundred words for reducing the testimony to writing, and in cases involving more than ordinary skill or labor on the part of the referee, such greater compensation as may be agreed upon by the parties or allowed by the court. His compensation and costs may be demanded by him after he shall have decided the cause, and he may withhold all the papers and records of the cause until his fees shall be paid, unless, after due notice to him and opportunity to be heard, it is otherwise ordered by the court. Ib., Sec. 2.

1665. (1236.) Compensation of officers. — Officers performing services in and about such reference shall receive the same compensation as for like services performed in the court making the reference. Modified by Sec. 1, Ch. 4387, Acts of 1895.

CHAPTER XXIII.

OF SHERIFFS IN THEIR RELATION TO CIVIL COURTS.

(For their relations peculiar to circuit courts, see Sections 1841 to 1843.)

ARTICLE 1.—Their bonds. Sections.....1666-1669
2.—Their duties. Sections.....1670-1674
3.—Their deputies and substitutes. Section..... 1675
4.—Their places of office and residence. Sections.....1676-1677
5.—Penalties for defaults of. Sections.....1678-1680
6.—Proceedings upon the death, and expiration of term, of. Sections 1681-1682
7.—Their compensation. Sections.....1683-1684

ARTICLE 1.

BONDS OF SHERIFF.

Ch. 3794 Secs. 1, 4, June 2, 1887.

1666. (1237.) Requirements of bonds.—He shall, before he is commissioned, give bond with not less than two sureties, in a sum to be fixed by the county commissioners not less than two hundred dollars and not more than ten thousand dollars, payable to the Governor of the State of Florida and his successors in office, conditioned for the faithful performance of the duties of his office, which shall be approved by the board of county commissioners and Comptroller, and be filed with the Secretary of State: Provided, The requisite of two sureties and justification of same shall not apply where security is by a solvent surety company, authorized to do business in this State.

Ib., Sec. 9.

1667. (1238.) Obligation of sureties.—Each surety upon such bond may bind himself for a specified sum, and the aggregate amount for which the sureties shall bind themselves shall not be less than the penalty of the bond.

Ib., Sec. 10.

1668. (1239.) Justification of sureties.—Each surety upon such bond shall make an affidavit that he is a resident of the county for which the officer is to be commissioned, and that he has sufficient visible property therein, unencumbered and not exempt from sale under legal process, to make good his bond. This provision shall not apply to surety companies duly authorized to do business in this State.

Ch. 987, Sec. 4, Dec. 22, 1859.

1669. (1240.) Liability of sureties.—The said sureties shall be liable for all fines and amercements imposed upon him.

ARTICLE 2.

DUTIES OF THE SHERIFF.

Ch. 4, Sec. 14, July 22, 1845; Ch. 157, Sec. 1, Jan. 7, 1848.

1670. (1241.) To execute process.—Each sheriff shall in person or by deputy execute all process of the Supreme Court, circuit court, county court and criminal court, and board of county commissioners to be executed in the said courts, and such process of justice of the peace courts as may come to his hands to be executed.

1671. (1242.) To attend court.—He shall in person or by deputy, attend every term of the circuit court, county court, criminal court and county judge's court in his county. Ch. 1626, Sec. 9, Aug. 1, 1868.

1672. (1243.) Power to appoint sheriff, etc.—Whenever any sheriff or coroner in the State, shall fail to attend in person or by deputy any term of the circuit court, county court or criminal court of his county from sickness, death or other cause, the judge attending said court shall have power to appoint a sheriff, who shall assume all the responsibilities, perform all the duties, and receive the same compensation as if he had been duly appointed sheriff, for said term of court and no longer. Ch. 1394, Sec. 1, Nov. 27, 1863.

1673. (1245.) To keep an execution docket.—He shall keep an execution docket, which shall contain a list of all executions, orders and decrees directed to him, in relation to the collection of moneys, and a statement of all moneys credited on such orders, executions and decrees, and when and to whom and by whom paid. Ch. 1553, Secs. 1, 2, 3, Dec. 13, 1866.

Said docket shall be laid before the court at each term, and be subject to the inspection of all parties interested.

His failure to keep said docket, to lay it before the court or to allow inspection of the same, shall be considered a contempt of court, and subject him to a fine not exceeding one hundred dollars, at the discretion of the court.

Duties as to process of military courts.—See Sections 704, 705, 708, 709.

1674. When sheriff may accept service.—Sheriffs when sued as administrator ex-officio, or otherwise in their official capacity, may accept service, and when so sued with others may serve his co-defendants and receive the fees allowed by law, except no fees shall be allowed for acceptance of service. See Ch. 4411, Acts of 1895.

To justify officer taking property under attachment it should be properly returned.—Dowling v. Bowden, 25 Fla., 712; 6 So. Rep. 765.

ARTICLE 3.

DEPUTY OF SHERIFFS.

1675. (1247.) Deputy sheriffs.—Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and de- Ch. 1659, Sec. 4 Aug. 6, 1868.

fault of whom in the execution of their office the sheriff shall be responsible.

Powers of special deputies.—Guarantee Trust, etc., Co. v. Buddington, 23 Fla., 514; 2 So. Rep. 885. Actual deputation must exist.—Ib. Sheriff of each county deputy of sheriff of Supreme Court without special appointment.—State v. Johnson, 35 Fla., 539; 17 So. Rep. 650. Bailiffs attending juries derive their authority from sheriffs. Circuit judge no authority to appoint.—Nicholson v. State, 38 Fla., 99; 20 So. Rep. 818. Sheriff liable for failure of his bailee to care for property attached.—Chapman v. Reddick, 41 Fla., 120; 25 So. Rep. 673.

ARTICLE 4.

PLACES OF OFFICE AND RESIDENCE OF SHERIFFS.

Feb. 12, 1834. Sec. 3.

1676. (1248.) Place of office.—The place of office of every sheriff shall be at the county seat of the county.

Ch. 1851, Sec. 1, Jan. 26, 1871.

1677. (1249.) Place of residence. — He or his deputy shall reside at the county seat or within two miles thereof.

ARTICLE 5.

PENALTIES FOR DEFAULTS OF SHERIFFS.

Ch. 997, Sec. 1, Dec. 22, 1859.

1678. (1250.) Failures to execute process. — Every sheriff or deputy failing to execute any writ or other process, civil or criminal, to him legally issued and directed within his county and make due return thereof, where such process shall be delivered to him in time for execution, shall forfeit one hundred dollars for each neglect, to be paid to the party aggrieved, by the order of the court, upon motion and proof of such delivery, unless such sheriff or deputy can show sufficient cause for such failure or neglect to the court.

Ib., Sec. 2.

1679. (1251.) False return.—For every false return the sheriff shall forfeit and pay five hundred dollars, one moiety thereof to the party aggrieved, and the other moiety to him who will sue for the same, to be recovered with costs by action of debt; and the said sheriff shall be further liable to an action of the party aggrieved.

Action for false return.—McLeod v. Ward, 9 Fla., 18.

1680. (1252.) His failure to pay over money.—If any sheriff shall fail to collect or pay over fines, fees, costs or other moneys adjudged to the State which he shall have been by proper process directed to collect, he shall forfeit his commissions and also be liable to a fine of fifty dollars, to be recovered by motion before the circuit court, after ten days' notice; and his sureties shall also be liable for the amount of such moneys upon his bond as sheriff. Ch. 217, Sec. 9, Jan. 9, 1849.

Conclusiveness of sheriff's return.—Tidwell v. Witherspoon, 18 Fla., 282.

Effect of defective return.—Doggett v. Jordan, 3 Fla., 215, 4 Fla., 121.

Subpoena in chancery return when good.—Johnson v. Johnson, 23 Fla., 413; 2 So. Rep. 834. Service when good.—Thebault v. Canova, 11 Fla., 143.

ARTICLE 6.

PROCEEDINGS UPON DEATH AND EXPIRATION OF TERM OF SHERIFF.

1681. (1253.) His death.—Whenever any sheriff shall die, his executors, administrators or other representatives shall hand over to his successor in office, taking a receipt for the same, all the papers in the possession of and belonging to such decedent as sheriff; and if, in any case, a successor should not be qualified in due time to serve or execute the process of the court, the deputy of such deceased sheriff, if there should be one, or some other person, shall be employed by an order from the judge of the circuit court to receive from the representatives of the decedent and execute all process which remained in his possession at the time of his decease. Nov. 23, 1828, Sec. 15.

1682. (1254.) Expiration of his term.—The sheriff shall, at the expiration of his term of office, turn over to his successor by schedule (taking a receipt for the same) all such writs and processes as shall remain in his hands unexecuted, and his successor in office shall duly execute and return the same; and in case any sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing, and his sureties, shall be liable to make such satisfaction by damage and costs to the party aggrieved as he shall sustain by reason of such neglect or refusal; and the succeeding sheriff shall be empowered, and he is hereby required, to sell and carry into effect any levy made by any predecessor in office in like manner as the former sheriff could have done had he continued therein, and Ib. Sec. 16.

shall make titles to the purchaser for all the property sold under execution or other process and not conveyed by any predecessor.

ARTICLE 7.

COMPENSATION OF SHERIFFS.

(For compensation for services to be rendered exclusively in the circuit courts, see Section 1842.)

Ch. 3106, Sec. 3, Mch. 7, 1879.

1683. (1255.) Manner of payment and amounts.—The compensation of sheriffs shall be entirely by fees, which shall be as follows:

Advertising property for sale	$0 50
Arrest of prisoner	1 00
Safe keeping and punishment of prisoner (not otherwise provided for), actual and necessary expense to be fixed by the judge.	
Attendance per day in Supreme or Circuit Court	$2 00
Bailiff, not more per day than	1 25
Bond, writing, taking and approving	75
Commissions on money collected under process:	
Upon Actual Sale.—On first $300, three per cent.; $300 to $2,000, two per cent.; over $2,000, one per cent.	
Without Sale.—On first $300, two per cent.; $300 to $2,000, one per cent.; over $2,000, one-half of one per cent.	
He shall, after levy, be entitled to his commission, notwithstanding payment of debt to plaintiff.	
On moneys collected for the State, as fines, fees, costs or other moneys adjudged to the State, five per cent.	
Commitment to jail of prisoners arrested by him	$0 50
Recommitment under order	25
Commitment of prisoner to jail, per mile, each way	10
Copy of process, one hundred words or less	15
Every subsequent hundred words	08
Coroner's inquest, attending	3 00
And mileage, per mile, each way	10
Deed of real estate, executing (paid by purchaser)	1 00
Fieri facias, or other process, levying	1 00
Guards, not more per day than	1 00

Habeas corpus, executing	1 00
Hab. fa. ca. sa., execution of	1 00
Horses and mules taken under the process, keeping, not more per day than	50
The officer shall not use such stock.	
Horse hire, no more per day than	1 00
Jurors, or talesmen, or bystanders, summoning under special venire, or by order, each	15
Jury, petit, calling	20
Mileage, distance to be estimated from the court house door to the point of execution of process, per mile, each way	10
Personal property, levying and safe keeping of, actual and necessary expenses to be fixed by the judge.	
Release of prisoner	25
Removal of prisoner, to or from jail, per mile	10
Servants, not more per day than	75
State prison, conveying prisoner to, $3 per day for himself and $1.50 per day for each guard actually necessary, the necessity to be determined by the Comptroller. The State will furnish transportation.	Ch. 1891, Sec. 4, Feb. 17, 1879.
Stock, other than above, taken under process, keeping, such allowance as the judge may fix.	
Subpoena for witness, service on each witness	20
Return of same	05
Venire, grand or petit jury, executing	5 00
And mileage, per mile, each way	10
Writ in action at law, executing	50
Return of the same	10

(Fees in lunacy proceedings: See Ch. 5457, Appendix.)

1684. (1256.) Constructive mileage not to be charged.— No sheriff, constable or coroner shall charge constructive mileage. The mileage charged for must be actually traveled by the nearest and most direct route by the public highway. Ch. 3106, Sec. 2, Mch. 7 1879.

(Mileage out of State: See Chap. 5407, Appendix.)

CHAPTER XXIV.

OF CONSTABLES.

Bond. Section	1685
Duties. Section	1686
Powers territorially. Section	1687
Resignation, removal and death. Section	1688
Fees. Section	1689

Ch. 3724, Secs. 1, 8, June 2, 1887.

1685. (1257.) Bonds.—Every constable shall give bond in the sum of five hundred dollars, which shall be governed by the provisions governing bonds to be given by the clerk of the circuit court.

Nov. 21, 1828, Sec. 42.

1686. (1258.) Duties.—Constables in the several counties shall serve all summonses and warrants, and levy all executions placed in their hands, agreeably to the tenor thereof, and make due returns of the same to the court to which they may be made returnable; and if any constable shall fail to pay over money collected by him on any execution or other process to the person entitled to receive the same on demand, he shall be liable to a penalty of twenty-five per cent. upon the amount so collected for such failure; and it shall be the duty of the court issuing such execution or other process, upon application of the plaintiff, upon his making it appear that said constable has received the amount of said execution or other process, or any part thereof, and has failed to pay over the same on demand, to issue an execution against said constable and his sureties for the same, together with the penalty herein prescribed; which execution shall be levied, and the money raised by some other constable of the county, out of the property of said defaulting constable and his sureties.

Executive officer county judge's court and justice of the peace court.—Section 2077.

Ib., Sec. 41, as amended by Ch. 4989, Acts of 1901, and Ch. 4384, Acs of 1895.

1687. (1259.) Powers territorially. — Any constable of the county in which the process issued may serve process of county judge's courts and justices of the peace courts in any district of said county where the same may be lawfully served: Provided, He shall not be entitled to greater mileage in any case in serving writs from courts of justices of the peace than he would be if the writ issued from such court in the district in which such constable resides and for which he was elected.

Nov. 21, 1828. Sec. 49.

1688. (1260.) Resignation, death and removal.—Whenever any constable resigns or is removed from office, it shall be his duty to deposit all papers and unfinished business in the court to which the same is made returnable; and if any constable going out of office shall fail to deposit his papers and unfinished business as aforesaid, he and his sureties shall be liable to the action of any person injured by such failure; and if any constable shall die, it shall be the duty of his executor or administrator to deposit his papers as aforesaid, and the court in which the said papers and unfinished business are deposited shall cause the same to be acted upon.

1689. (1261.) Fees.—The fees of constables shall be the same as are allowed sheriffs for like services. Ch. 3106, Acts of 1879, Sec. 4.

CHAPTER XXV.

APPELLATE PROCEEDINGS AT LAW AND IN PROBATE MATTERS.

APPELLATE PROCEEDINGS AT LAW.

ARTICLE 1.—What appellate proceedings authorized. Section..... 1690
2.—What reviewable and how reviewed. Sections.....1691-1697
3.—Procurement and effect of writ of error. Sections..1698-1701
4.—Sci. fa. ad. aud errores, and service of. Sections.....1702-1704
5.—Proceedings in appellate court. Sections 1705-1706
6.—Duty of appellate court. Sections.....1707-1709
7.—Appellate proceedings in probate matters. Sections...1710-1712

ARTICLE 1.

WHAT APPELLATE PROCEEDINGS AUTHORIZED.

1690. (1262.) Enumeration.—All proceedings to procure review by an appellate court of the proceedings of a lower court in cases at law shall be by writ of error, except in cases where certiorari or prohibition shall lie, or where it shall be otherwise expressly provided.

Where certiorari lies.—Basnett v. Jacksonville, 18 Fla., 523; Edgerton v. Mayor, 18 Fla., 528; Holliday v. Jacksonville R. R. Co., 6 Fla., 302. Certiorari from circuit court to county judge.—Deans as admr. v. Wilcoxen, 18 Fla., 531. Review of such proceeding by Supreme Court.—Ib.

On certiorari Supreme Court has power to quash judgments of inferior courts, when.—J., T. & K. W. Ry. Co. v. Boy, 34 Fla., 389; 16 So. Rep. 290. Meinaugh v. Orlando, 41 Fla., 433; 27 So. Rep. 34. When certiorari does not lie.—Hunt v. Jacksonville, 34 Fla., 504; 16 So. Rep. 398.

Since adoption of Revised Statutes of 1892 judgments at law can be reviewed only by writ of error.—Montgomery v. Thomas, 40 Fla., 450; 25 So. Rep. 62. But an equity case can not be reviewed by writ of error.—Grooms v. Wood, 43 Fla., 50; 29 So. Rep. 445.

First attempt to appeal being ineffective a second writ of error may be sued out in the time limited by statute.—Glaser v. Hackett, 37 Fla., 358; 20 So. Rep. 532; Garrison v. Parsons, 41 Fla., 143; 25 So. Rep. 336.

ARTICLE 2.

WHAT REVIEWABLE AND HOW REVIEWED.

Writs of error only from final judgments. Section..... 1691
From rule of court. Section..... 1692
Matters remediable when upon writs of error. Section..... 1693
Reserving exceptions. Section..... 1694
From orders granting new trials. Section..... 1695
Procurement of bills. Section..... 1696
Bills of exceptions upon non-suit. Section..... 1697

1691. (1263.) Writs of error—only from final judgments.—Writs of error shall lie only from final judgments, except as specified in Section 1695.

What is Final Judgment, Generally.—Harrison v. Thurston, 11 Fla., 307.

Instances.—Dismissal of rules to show cause against issuance of writ of prohibition.—Singer Man'fg. Co. v. Spratt, 20 Fla., 122. Order dissolving ancillary attachment.—Jeffreys v. Coleman, 20 Fla., 536. Judgment for defendant.—Sedgwick v. Dawkins, 18 Fla., 335. Dismissal of cause.—Cook v. Cook, 18 Fla., 364.

What is Not Final Judgment Generally.—Gates v. Hayner, 22 Fla., 92; Ropes v. Eldridge, 39 Fla., 47; 21 So. Rep. 570.

Instances.—Entry sustaining demurrer with costs.—Johnson v. Polk County, 24 Fla., 28; 3 So. Rep. 414. Order overruling demurrer.—St. Augustine v. Usina, 16 Fla., 829; Dorman v. Ritzewoller, 14 Fla., 44. Order refusing to dissolve attachment.—Forbes v. Porter, 23 Fla., 41; 1 So. Rep. 336. Order refusing to dissolve attachment after plea pleaded.—Harrison v. Thurston, 11 Fla., 307. Order dissolving attachment, before plea to action without judgment dismissing suit.—Lyman v. Alexander, 9 Fla., 489. (See 20 Fla., 536.) A default.—Blount v. Gallagher, 22 Fla., 92; Coons v. Harlee, 17 Fla., 484. Entry "demurrer sustained."—Gates v. Hayner, 22 Fla., 325. Order granting a continuance.—How such order reviewed.—Green v. Gooding, 20 Fla., 773. Endorsement "motion granted" on motion in arrest of judgment.—Sedgwick v. Dawkins, 17 Fla., 811. Judgment dismissing replevin suit.—McKinnon v. McCollum, 6 Fla., 376. Order of circuit judge refusing to allow supersedeas on appeal from county judge.—Barnett v. Togni, 16 Fla., 328.

Section Applied.—Where there is no judgment.—Rain v. Savage, 14 Fla., 301. When there is no final judgment.—Staples v. Hartridge, 8 Fla., 426; McKinnon v. McCollum, 6 Fla., 376; Branch v. Branch, 5 Fla., 447. When judgment does not appear otherwise than by recital in bill of exceptions.—Anderson v. Presbyterian Church, 13 Fla., 592; Tunno v. International, etc., 34 Fla., 300; 16 So. Rep. 180.

Section How and When Applied.—Dismissal of appeal upon rehearing or at any time during term.—Savage v. State, 19 Fla., 561; Sedgwick v. Dawkins, 17 Fla., 556; Watson v. Savell, 9 Fla., 506; Myerson v. Home Insurance Co., 15 Fla., 574.

Parties where the judgment is against several defendants all must join.—Nash v. Haycraft, 34 Fla., 449; 16 So. Rep. 324; J. M., etc., Co. v. Broughton, 38 Fla., 139; 20 So. Rep. 829; McClellan v. Culpepper, 41 Fla., 107; 26 So. Rep. 187; Sherlock v. Couper, 41 Fla., 51; 29 So. Rep. 444; Jones v. Stewart, 37 Fla., 369; 19 So. Rep. 657. Names of defendants in error should

be stated in full, et al. insufficient.—State v. Canfield, 40 Fla., 36; 23 So. Rep. 591. Where judgment against defendant and sureties in replevin, defendant can maintain suit alone.—Holliday v. Wright, 43 Fla., 46; 29 So. Rep. 534.

Individual names should be given in entry of appeal.—Continental, etc., Co. v. Miller, 41 Fla., 418; 27 So. Rep. 297; National Bank v. Newheart, 41 Fla., 470; 27 So. Rep. 470.

The two writs of error and sci. fa. not essential to be issued by same officer or at same time.—First National Bank v. King, 36 Fla., 25; 18 So. Rep. 1. No formal demand for a writ of error necessary.—First National Bank v. King, 36 Fla., 25; 18 So. Rep. 1. Christopher v. Newnham, 34 Fla., 370; 16 So. Rep. 274; Gerig v. Diamond Phosphate Co., 37 Fla., 335; 19 So. Rep. 877. Issuance and lodgment of writ of error essential to jurisdiction of appellate court.—Player v. Bokenfohr, 40 Fla., 415; 24 So. Rep. 472.

Writ of error served by lodging in court below.—Kennesaw Mill Co. v. Bynum, 34 Fla., 360; 16 So. Rep. 276.

Under Section 1704, these General Statutes, the record of writ of error essential to jurisdiction of Supreme Court.—State v. Canfield, 40 Fla., 36; 23 So. Rep. 591. Issued during term must be returnable to next term.—Payne v. Roche, 41 Fla., 478; 27 So. Rep. 29. If transcript of record shows no final judgment writ will be dismissed.—Vanhorne v. Henderson, 37 Fla., 354; 19 So. Rep. 659; Same v. Long.—Ib.

Sci. fa. when a nullity.—Simmons v. Beville, 42 Fla., 356; 29 So. Rep. 441.

Amendments of writ of error or sci. fa.—Nash v. Haywood, 34 Fla., 449; 16 So. Rep. 324; Williams v. Pitt, 38 Fla., 162; 20 So. Rep. 936; Coswell v. Franklin, 40 Fla., 149; 23 So. Rep. 591.

A notice by attorneys and acceptance not equivalent to issuing and serving a sci. fa.—Dillard v. Agnew, 37 Fla., 56; 19 So. Rep. 338. Service of sci. fa. necessary to jurisdiction of the person by appellate court.—Whitfield v. Leonard, 38 Fla., 1; 20 So. Rep. 764. Objections to issuance and serving overruled.—Jacksonville, etc., Co. v. Broughton, 38 Fla., 139; 20 So. Rep. 829; Sanchez v. Haynes, 36 Fla., 96; 18 So. Rep. 115.

When not served before return day of writ of error proceedings will be dismissed.—Pyles v. Beall, 37 Fla., 549; 20 So. Rep. 775.

1692. (1264.) From rule of court operating as a judgment.—In all cases in which a rule of court or other summary order to any of the officers of the court and their sureties, or deputies, is in effect a judgment for the payment of money or other thing, the party aggrieved may prosecute his writ of error as if the rule or order were a formal final judgment at law. Feb. 17, 1833.

1693. (1265.) Matters remediable upon writs of error.—All orders and judgments of courts of this State made and passed in any cause therein, wherein the said courts shall allow and grant, or shall refuse to allow and grant, any motion for new trial, or any motion to amend the pleadings, or to file new or additional pleadings, or to amend the record of any cause during the term of court in which it was determined, or shall refuse to allow and grant a motion for Ch. 521, Sec. 1, Jan. 7, 1853.

the continuance of a cause, or shall sustain or overrule any demurrer, shall and may be assigned for matter and cause of error upon any writ of error from the final judgment in said cause, taken to the appellate court; and the said court shall hear and determine the matter so assigned for error in the same manner and under the like rules and regulations as in other cases.

Ch. 3430, Sec. 1, Feb. 5, 1883.

Pleading over or amending pleadings after judgment on demurrer shall not waive the right to have reviewed as aforesaid such judgment or demurrer.

Provisions as to demurrer not applicable to motion to set aside service.—Stephens v. Bradley, 24 Fla., 201; 3 So. Rep. 415. Applied.—Jones v. Johnson, 21 Fla., 431. Order of court trying without jury reviewable.—Knox v. Barnett, 18 Fla., 594. Ruling on motion for new trial reviewable.—Bridier v. Yulee, 9 Fla., 481. Order directing attorney to return paper withdrawn from the files not reviewable.—Fraser v. Livingston, 1 Fla., 393.

Ch. 521, Sec. 2, Jan. 7, 1853.

1694. (1266.) Reserving execptions in above cases.—In all cases enumerated, except that of a judgment upon demurrer, the party aggrieved by any such order or judgment shall make his exceptions thereto in writing, and shall insert therein all such evidence, affidavits, amendments or pleadings, and all other matters which do not properly appear of record, which were considered by the court below, or which were offered to the consideration of the court below, in the making and passing said order and judgment; and the said exceptions shall be tendered to the judge of the court for his signature in the same manner and under the same rules, regulations and provisions as bills of exceptions are by law made up, signed and made a part of the record.

Exception as to judgment upon demurrer applied.—Hinote v. Simpson, 17 Fla., 444. There is no exception without an objection.—Coker v. Hayes, 16 Fla., 368.

1695. (1267.) Writs of error from orders granting new trials.—Upon the entry of an order granting a new trial at law, the party aggrieved by such order may, without waiting for a final judgment in the cause, prosecute a writ of error to the proper appellate court, which shall review the said order, and if the cause be reversed, shall direct final judgment to be entered in the court below, for the party who had obtained the verdict in the court below, unless a motion in arrest of judgment, or for judgment non obstante veredicto, shall be made and prevail.

Writs of error in habeas corpus cases.—Section 2257.

Appeals in railroad commission cases.—Section 2923.

The word "appeals" in Railroad Commission Act of 1899 includes all appropriate proceedings for review of judgments and decrees of inferior courts.—State v. Jacksonville Terminal Co., 41 Fla., 363; 27 So. Rep. 221.

1696. (1268.) Procurement of bills of exceptions.—The judge of any court of this State, upon a trial at law in said court, shall sign, upon request, any bill of exceptions taken during the progress of the cause and tendered to the court, if said bill as tendered fairly states the truth of the matter and the exception designed to be taken, and the same shall, when signed, become a part of the record of such cause; and in case the judge refuses to sign a bill of exceptions when so tendered for that purpose, it shall be lawful for three persons to sign the same in the presence of the judge and certify that the same was presented to the judge and he refused to sign it, which bill shall be as valid and have the same force as though it were signed by the judge of said court; and the court shall permit the same to be filed and become a part of the record. And if the judge refuses to let the same be filed as aforesaid, the Supreme Court may, when such case is brought before it by writ of error, upon affidavit of such refusal, admit such bill of exceptions as a part of the record.

Ch. 138 Sec. 1, Jan. 11, 1848.

Nov. 23, 1828, Sec. 68.

BILLS OF EXCEPTIONS.

When to be Settled.—During term or by special order afterwards.—Robinson v. Hartridge, 13 Fla., 501; Bardin v. L'Engle, 13 Fla., 571. If not, stricken out.—Bowden v. Wilson, 21 Fla., 165; Potsdamer v. State, 17 Fla., 895. When signed by other persons it must appear that they were present at trial, etc.—Williams v. Pitt, 38 Fla., 172; 20 So. Rep. 936.

Allowance of Time After Term by Judge.—Allowance of time to make bill means time after term.—Lewis, Extr., v. Meginniss, 25 Fla., 589; 6 So. Rep. 169; Marks v. Boone, 24 Fla., 177; 4 So. Rep. 532. Allowance of time must be entered upon the minutes.—Temple v. F. L. & I. Co., 23 Fla., 59; 1 So. Rep. 333. Evidence of allowance of time.—Baker v. Chatfield, 23 Fla., 540; 1 So. Rep. 779; Robinson v. Hartridge, 13 Fla., 501. How time allowed counted; meaning month.—Bacon v. State, 22 Fla., 46. At what term must be signed or further time procured.—Greeley v. Percival, 21 Fla., 428. Time cannot be extended after adjournment of court.—Myrick v. Merritt, 21 Fla., 799. May be signed by judge after time, if in his hands before time expires.—Mayo v. Hinote, 16 Fla., 673; Glaster v. Hackett, 37 Fla., 358; 20 So. Rep. 552. Does not extend time for appeal.—Jackson v. Haisley, 27 Fla., 205; 9 So. Rep. 648. Evidence of time of signing.—Greeley v. Percival, 21 Fla., 428.

By Whom to be Settled.—Judge holding court for another may sign after term in time allowed by order.—Bacon v. State, 22 Fla., 46. By judge other than one trying case. Sickness.—Bardin v. Wilson, 21 Fla., 165. By successor after resignation.—Hayes v. McNealy, 16 Fla., 406.

Necessity For.—Necessary to review order overruling motion for new trial.—Grady v. Jeffries, 25 Fla., 743; 6 So. Rep. 828. Only method of bringing up facts on trial at law.—Patrick v. Young, 18 Fla., 50; Brevard v. State, 9 Fla., 422; Burk v. Clark, 8 Fla., 9; Bailey v. Clark, 6 Fla., 516; Pine v. Anderson, 22 Fla., 331; Pitman v. Myrick, 16 Fla., 692. To review errors not on record.—Myrick v. Merritt, 22 Fla., 335; Dorman v. Bigelow, 1 Fla., 281. To review suppression of deposition.—Pollak v. Hutchinson, 21 Fla., 128. To review judgment on trial without jury.—Bogue v. McDonald, 14 Fla., 66. What such bill should contain.—Ib. Paper filed but not in bill of exceptions not part of record.—Dorman v. Bigelow, 1 Fla., 281. Agreement

of counsel not a substitute for.—Pine v. Anderson, 22 Fla., 331, overruling Holbrook v. Thrasher, 4 Fla., 96. Must be signed by judge.—Robinson v. Matthews, 16 Fla., 319; Jacksonville v. Lawson, 16 Fla., 321; Schultz v. Pacific Ins. Co., 14 Fla., 73; Malley v. Ingersoll, 14 Fla., 200; Rain v. Savage, 14 Fla., 201; Robinson v. Hartridge, 13 Fla., 501.

When Not Necessary.—To review errors apparent on face of record.—Cates v. Harner, 22 Fla., 325; Pine v. Anderson, 22 Fla., 331. To review order on motion in arrest of judgment.—Sedgwick v. Dawkins, 18 Fla., 335. In chancery cases.—Lent v. Clark, 22 Fla., 515.

From What May be Taken.—From order refusing to dissolve attachment.—Forbes v. Porter, 23 Fla., 47; 1 So. Rep. 336. From facts in judgment (at law) of referee.—Stewart v. Matthews, 19 Fla., 752.

Use of on Second Appeal.—Permitted after abandonment of first appeal.—Baker v. Chatfield, 23 Fla., 61; 1 So. Rep. 779.

Effect of Absence or Deficiency of.—Certain papers not in, disregarded on appeal.—Ib., 1 So. Rep. 779. Imperfect not considered.—Wiggins v. State, 23 Fla., 180; 1 So. Rep. 693. Showing on face not signed in time, not considered.—Bush v. State, 21 Fla., 569; Webster v. Barnett, 17 Fla., 272. No proceedings not in and not otherwise of record, considered.—Gallagher v. State, 17 Fla., 370; Burk v. Clark, 8 Fla., 9. No reversal for error of fact when there is no bill of exceptions.—Price v. Sanchez, 8 Fla., 136. New trial granted upon confused and uncertain, producing doubt as to action of court below.—Pearson v. Grice, 8 Fla., 214; Dibble v. Truluck, 11 Fla., 135. Nullity, unless law and rule complied with.—Smith v. State, 20 Fla., 839.

Presumption in Absence or Deficiency of.—P. & I. R. R. Co. v. State, 23 Fla., 546; 3 So. Rep. 158; Myrick v. Merritt, 22 Fla., 335; Frizbee v. Timanus, 12 Fla., 537; Dibble v. Truluck, 11 Fla., 135; Dorman v. Bigelow, 1 Fla., 281; Mitchell v. Chaires, 2 Fla., 18. That evidence sustained a good count in declaration.—Miller v. Kingsbury, 8 Fla., 356. Upon absence of full.—Horn v. Carter's admr., 20 Fla., 45; Reed v. State, 6 Fla., 564; Blige v. State, 20 Fla., 742; Boswell v. State, 20 Fla., 869; Potsdamer v. State, 17 Fla., 895; Schultz v. Pacific Ins. Co., 14 Fla., 73; Mountain v. Roche, 13 Fla., 581; Duggen v. State, 9 Fla., 516; Bailey v. Clark, 6 Fla., 516. When absent and no error in record, judgment confirmed.—Parsons v. Baxter, 13 Fla., 580.

What Must Contain.—When must contain all the evidence.—Livingston v. Cooper, 22 Fla., 292. All evidence connected with charge and instructions excepted to.—Dibble v. Truluck, 11 Fla., 135; Burke v. Clark, 8 Fla., 9. How much evidence.—Seymour v. Creswell, 18 Fla., 29. Need only contain part of tax assessor's books.—Sams v. King, 18 Fla., 552. When must contain whole testimony.—Robinson v. Hartridge, 13 Fla., 501. Evidence that all testimony is in bill.—Ib. Must contain all testimony on appeal from refusal to grant new trial.—Tompkins v. Easton, 8 Fla., 14. What should contain.—Dibble v. Truluck, 11 Fla., 135; Fash v. Clark, 8 Fla., 16; McKay v. Friebele, 8 Fla., 21. All evidence upon motion and proceedings to be reviewed.—Carter v. State, 20 Fla., 754; Bailey v. Clark, 6 Fla., 516. Function of.—Watson v. Seat, 10 Fla., 336; Cato v. State, 9 Fla., 163; Horn's extrs. v. Gartman, 1 Fla., 63. Bill of exceptions proper should exhibit all questions in pais except sufficiency of evidence to sustain verdict.—Jacksonville St. Ry. Co. v. Walton, 42 Fla., 54; 28 So. Rep. 59. When must include charge of court.—Richards v. State, 23 Fla., 349; 9 So. Rep. 704.

Special Bill of Exceptions.—Instance of. May be good through general bill bad.—Myrick v. Merritt, 22 Fla., 335. When special, not in general bill, considered.—Fash v. Clark, 9 Fla., 16; McKay v. Bellows, 8 Fla., 31.

Frame of.—Skeleton bill when sufficient.—Sams v. King, 18 Fla., 552. Sealing by judge not required.—Robinson v. L'Engle, 13 Fla., 482.

Effect of.—Unimpeachable when properly attested.—Sams v. King, 18 Fla., 552; Bailey v. Clark, 6 Fla., 516.

Presumptions in Favor of.—When signed by judge presumed to have been signed in time, unless record shows otherwise.—Doe ex dem. v. McGruder, 13 Fla., 602. When issued by judge presumed to have been regularly settled.—Bowen v. Darby, 14 Fla., 202.

How Settled by Judge Upon Disagreement of Counsel.—Dibble v. Truluck, 11 Fla., 135.

How Settled When Judge's Memory Defective as to Facts.—Pearson v. Grice, 8 Fla., 214.

Should Not Include Testimony in Rebuttal of That Upon Which Charge Was Predicated.—Jacksonville St. Ry. Co. v. Walton, 42 Fla., 54; 28 So. Rep. 59. On motion to strike bill proper resort may be had to evidentiary bill when.—Ib.

Agreed Copy of Evidence Not Signed by Judge Not Equivalent to.—F. C. & P. R. R. Co. v. Abrams, 35 Fla., 514; 17 So. Rep. 639. Court will not recognize when interlined and defective.—Reynolds and Greek v. State, 33 Fla., 301; 14 So. Rep. 723.

Purpose and Office.—Lovett v. State, 29 Fla., 356; 11 So. Rep. 172; Pace v. Lanier, 32 Fla., 291; 13 So. Rep. 360. Of an evidentiary bill.—Allen v. Lewis, 38 Fla., 115; 20 So. Rep. 821.—Should contain nothing but the evidence.—Ib.

Imports Verity Cannot be Attacked in Supreme Court Even For.—Glaser v. Hacket, 38 Fla., 514; 20 So. Rep. 820. Exceptions may be predicated upon instructions of court without motion for new trial.—Williams v. LaPenotiere, 32 Fla., 491; 14 So. Rep. 157.

Absence From Transcript of Order Allowing Time Not Ground to Strike When.—Glaser v. Hackett, 37 Fla., 358; 20 So. Rep. 532. Stricken when.—Stephens v. Hale, 33 Fla., 618; 15 So. Rep. 251. Must contain depositions read at trial, when.—Bacon v. Green, 36 Fla., 325; 18 So. Rep. 870. Evidence in a criminal case when.—Richardson v. State, 28 Fla., 349; 9 So. Rep. 704. Affidavits on motion to open a default.—Hellen v. Steinwender, 28 Fla., 191; 10 So. Rep. 207. Affidavits do not take the place of a bill of exceptions.—Parkhurst v. Stone, 36 Fla., 463; 18 So. Rep. 596; Ropes v. Kemps, 38 Fla., 233; 20 So. Rep. 992.

Ordinary and Evidentiary Bills Must be Made up Separate and Distinct.—Allen v. Lewis, 38 Fla., 115; 20 So. Rep. 821. Exceptions to instructions should be specific.—Jager v. McCormick, 41 Fla., 204; 25 So. Rep. 883.

1697. (1269.) Bills of exceptions upon non-suit.—When, from any decision of the court on the trial of a cause in any court, it may become necessary for the plaintiff to suffer a non-suit, the facts, points or decisions may be reserved for the decision of the appellate court by bill of exceptions as in other cases. Ch. 3583, Sec. 1, Feb. 8, 1885.

ARTICLE 3.

PROCUREMENT AND EFFECT OF WRIT OF ERROR.

Right to teste and service of. Section..... 1698
Limitation upon time of suing out. Sections.....1699-1700
When to operate as a supersedeas. Section..... 1701

Feb. 10, 1832, Sec. 7.

1698. (1270.) Right to teste, and service of.—All writs of error shall be tested in the name of the chief justice of the Supreme Court and shall issue on demand as matter of right, from the office of the clerk of the appellate court or from that of the clerk of the court (or if there be no clerk from the office of the judge) in which the judgment has been rendered, and shall be returnable to the first day of the next succeeding term of the appellate court unless said first day shall be less than thirty days from the date of the writ, when it shall be made returnable to a day in such next succeeding term, more than thirty days and not more than fifty days from the date of the writ.

Feb. 12, 1836, Sec. 1.

But no writ of error shall be granted to the original plaintiff in any suit unless said plaintiff shall first pay all costs which may have accrued in and about the said suit up to the time when said writ of error shall be prayed.

The writ of error shall be served by filing it in the court the judgment of which is complained of.

Time of Issuance.—Driggs v. Higgins, 19 Fla., 103. A matter of right.—Weiskoph v. Dibble, 18 Fla., 22. Amendment of.—Driggs v. Higgins, 19 Fla., 103; Loring v. Wittich, 16 Fla., 232. Return of, to day in term.—Randall v. Jacksonville Street R. R. Co., 19 Fla., 409. Writ in partnership name is erroneous; whether amendable?—Johnson v. Polk county, 24 Fla., 28; 3 So. Rep. 414. Costs.—Does State have to first pay all costs? State v. Rushing, 17 Fla., 223. Non-payment of costs ground for dismissal by appellate court, even though plaintiff in error be non-resident.—Union Bank v. McBride, 2 Fla., 7. Applied as to costs.—Gordon v. Camp, 2 Fla., 23. Bond, not necessary unless supersedeas required.—Weiskoph v. Dibble, 18 Fla., 22. Writs of error must be tested in name of the chief-justice. Nullity if tested by the trial judge.—Stewart v. State, 42 Fla., 196; 28 So. Rep. 56.

Only parties to the judgment can maintain a writ of error.—Hamberg v. L. L. & G. Ins. Co., 42 Fla., 86; 27 So. Rep. 872.

Feb. 10, 1832, Sec. 10.

1699. (1271.) Limitation upon time of suing out.—All writs of error in judgments in civil actions shall be sued out and taken within six months from the date of said judgment; but where an infant or person non compos mentis shall be a party to a judgment in a civil action, six months shall be allowed to such infant, or person non compos mentis, after their respective disabilities are removed, in which to sue out a writ of error on any judgment as aforesaid.

1700. Married women.—Where a married woman shall be a party to any such judgment she shall be allowed two years in which to sue out a writ of error upon the same: Provided, That as to all judgments heretofore rendered against such married woman she shall be allowed two years after these General Statutes go into effect within which to sue out such writ of error.

Legislature may extend time for taking so as to include cases barred under old law.—Alvord v. Little, 16 Fla., 158. Writ is brought when filed in

court below.—Crippen v. Livingston 12 Fla., 638. If can be issued nunc pro tunc in case of official delinquency, quaere?—Knight v. Towles, 32 Fla., 473; 14 So. Rep. 91. Must be lodged in court below.—Ib.

Scire facias, variance from writ of error and amendment of same.—U. S., etc., Ass'n. v. Weller, 30 Fla., 210; 11 So. Rep. 786. Issue of alias.—Ib. Service and return.—Sammis v. Wightman, 25 Fla., 547; 6 So. Rep. 173. Should be directed to the sheriff Supreme Court.—Ib. Defect in service, how cured.—Williams v. La. Penotiere, 26 Fla., 333; 7 So. Rep. 869; Oppenheimer v. Guckenheimer, 34 Fla., 13; 15 So. Rep. 670.

1701. (1272.) When to operate as a supersedeas.—

1. As of Course.—Every writ of error shall operate as a supersedeas if sued out during the session of court at which the judgment was rendered, or within thirty days thereafter, if, within said time, the plaintiff in error, if he be the plaintiff in the court below, shall have paid all costs which may have accrued in and about said suit up to the time when the writ shall be issued, and shall have filed a bond payable to the defendant, with two good and sufficient obligors, to be approved by the judge or clerk of the court below, in a sum sufficient to cover all costs which may accrue in the prosecution of the writ, conditioned to pay the said costs if the judgment of the court below shall be affirmed; or if he be a party in the court below against whom a judgment has been given, shall have filed a bond payable to the adverse party with like obligors and approved in like manner as the bond hereinbefore required of the plaintiff, and if the judgment be a money judgment, in a sum sufficient to cover the amount for which the judgment was given, together with costs, conditioned to pay the amount of the judgment with interest and costs, if the same shall be affirmed by the appellate court, but if the judgment is in whole or in part other than a money judgment, the amount and condition of the bond shall be determined by the court below.

Feb. 12, 1836, Sec. 1; Feb. 10, 1832, Sec. 1.

2. Upon Special Order.—No writ of error except as above shall operate as a supersedeas unless by the special order of the appellate court or some judge thereof made upon inspecting a copy of the record, and upon the plaintiff in error paying the costs and filing the bond required in the preceding paragraph. When such order is made and security given as aforesaid, the clerk, or the judge if there be no clerk, shall endorse on such writ of error that it shall be a supersedeas; and the said writ and endorsement shall be obeyed as such, suspending all further proceedings in relation to said judgment, in and by the officers of the said court below.

Ib., Sec. 7.

Waiver of sufficiency of each surety.—Pace v. Lanier, 25 Fla., 558; 6 So. Rep. 262. Identification of judgment in bond.—Forbes v. Porter, 23 Fla.,

47; 1 So. Rep. 336. Time of approval of bond.—Barrs v. Creary, 23 Fla., 61; 1 So. Rep. 335. Bond in excess of amount of money judgment sufficient.—Montgomery v. Knox, 22 Fla., 575. Supersedeas, effect of, in mandamus.—County Commissioners of Polk County v. Johnson, 21 Fla., 578. Absence of, cause for dismissal.—Orange County High School, etc., v. Sanford, 17 Fla., 120. Attorney cannot be surety on appeal bond.—Sedgwick v. Dawkins, 15 Fla., 572; Love v. Scheffelin, 7 Fla., 40. May sign as principal on behalf of party.—Cunningham v. Tucker, 14 Fla., 251. Attorney at law can not bind his client by executing.—Gordon v. Camp, 2 Fla., 23. Presumed to have been perfected in time by filing bond.—Summerlin v. Tyler, 6 Fla., 718. Liability of sureties upon, for damages for frivolous appeal.—Raney v. Barrow, 1 Fla., 327.

When without bond not a supersedeas.—McIver v. Marshall, 24 Fla., 42; 4 So. Rep. 563. When bond sufficient.—Fla., etc. v. Branham, 27 Fla., 526; 8 So. Rep. 841.

No bond required to obtain writ by defendant in civil action.—Ib.

Non-resident not a qualified surety.—Poyntz v. Reynolds, 37 Fla., 533; 19 So. Rep. 649. See also other points as to sufficiency of sureties.—Ib.

Discussion as to amount and condition of supersedeas bonds.—Palmer v. Palmer, 41 Fla., 184; 20 So. Rep. 640. In replevin cases.—Wheeler & Wilson Mfg. Co. v. Johns, 37 Fla., 262; 20 So. Rep. 236. In attachment cases.—Bacon v. Green, 36 Fla., 313; 18 So. Rep. 866. Approval.—Carpenter v. West, 38 Fla., 338; 21 So. Rep. 278. When additional bond will be required.—Ib.

ARTICLE 4.

SCI. FA. AD AUD ERRORES AND SERVICE THEREOF.

Issuance and time of service. Section..... 1702
Manner of service. Sections.....1703-1704

1702. (1273.) Issuance and time of service.—In all cases except where the writ of error lies into the Supreme Court the clerk, or judge if there be no clerk, issuing the said writ of error shall issue to the defendant in error a scire facias to hear errors, which shall be made returnable with the said writ of error, and shall be served twenty-five days before the return day.

Ib., Sec. 9.

Writs should be directed to sheriff.—Sammis v. Wightman, 25 Fla., 547; 6 So. Rep. 173. Error in form of, amendable.—Ib. Must be in name of party to record, even though sued out by person interested not a party.—Pensacola v. Reese, 20 Fla., 437.

1703. (1274.) Manner of service.—

1. Personal Service.—Such scire facias shall be served on all defendants in error resident in this State, as other writs are served.

Nov. 12, 1828, Sec. 9.

2. Upon Non-Residents and Absentees.—If the defendant in error be a non-resident of the State, or be not in the

Feb. 17, 1833, Sec. 1.

State, service of the sci. fa. may be made upon his attorney in the court below, or upon his legally authorized agent, or notice may be given by publishing the sci. fa. in a newspaper published in the county where the appellate court will sit to hear the case, once each week for four successive weeks.

Teste and service of—instance of illegal writ.—Knight v. Weiskoph, 21 Fla., 157. Is process, style of, amendable?—Weiskoph v. Dibble, 18 Fla., 22. Improperly issued and that do not notify appellee appeal is taken, is void.—Dunlap Mercantile Company v. St. John. 36 Fla., 303; 18 So. Rep. 761.

Where no legal service 25 days before term of court when returnable, appeal dismissed.—Jensen v. Walthour, 26 Fla., 448; 7 So. Rep. 854; Gerig v. Diamond Phosphate Company, 37 Fla., 335; 19 So. Rep. 877.

Must give the names of parties.—A. B. et al., not sufficient.—Chamberlain v. Finley, 40 Fla., p. 90; 23 So. Rep. 559.

1704. No sci. fa. necessary in Supreme Court.—It shall not be necessary in order to give the Supreme Court jurisdiction over the person of any defendant in error in civil causes, to issue or to serve the defendant in error with a scire facias ad audiendum errores, or with any other writ, process or notice, in any civil cause taken by writ of error to the Supreme Court, for the purpose of notifying him of the pendency of such writ of error proceeding; but all writs of error from the circuit courts to the Supreme Court in civil causes shall be recorded by the clerk of the circuit court to whom such writ of error is addressed in the minute book of his court within ten days after its issuance or receipt by him, and such recording by the clerk of the writ of error shall be deemed, taken and held to be sufficient notice to the defendant in error of the pendency of such writ of error proceeding in the Supreme Court, and the Supreme Court shall thereby acquire complete jurisdiction over the person of such defendant in error. Ch. 4529 Acts of 1897.

ARTICLE 5.

PROCEEDINGS IN APPELLATE COURT.

Filing transcripts of record, and proceedings thereon. Section..... 1705
Filing of assignment of errors. Section..... 1706

1705. (1275.) Filing of transcript of record and proceedings thereon.—It shall be the duty of the plaintiff in error to demand from the clerk of the court below, or from the judge if it have no clerk, a true copy of all proceedings in such cause in the court below, and to file said copy in the Feb. 10, 1832. Sec. 4.

appellate court on or before the return day of the writ of error. If the plaintiff in error fail to file the proceedings as aforesaid, it shall be the duty of said court, unless good cause be shown, to dismiss said writ of error on the adverse party producing a certificate from the clerk of the court below, or from the judge if it have no clerk, that a writ of error has been obtained; and upon receipt of the order dismissing such writ, certified by the clerk of the appellate court, the court below shall proceed to issue execution, as well for the costs and damages which may have been adjudged by said appellate court as for the amount and costs for which the judgment was originally pronounced.

Dismissal by court for failure to file.—Dismissal is in discretion of court. —Rain v. Thomas, 12 Fla., 493. Duty of court to dismiss is imperative.—Tallahassee R. R. Co. v. Heyward, 4 Fla., 398. Notice of motion to dismiss at first term required.—Enterprise v. State, 24 Fla., 152; 4 So. Rep. 17.

Instances of dismissal by court for failure to file.—Pontier v. Jeffares, 25 Fla., 844; 6 So. Rep. 830; Williams v. La Penotiere, 25 Fla., 473; 6 So. Rep. 167; Enterprise v. State, 24 Fla., 206; 4 So. Rep. 535; Webster v. Barnett, 17 Fla., 119. (Even though there was no final judgment below.—Ib.); Rain v. Thomas, 12 Fla., 493.

Instances of non-dismissal for failure.—Smith v. Curtis, 19 Fla., 786; Pitman, adm. v. Myrick, 16 Fla., 401; Richards v. Nall, 8 Fla., 369; Underwood v. Underwood, 12 Fla., 432; Williams v. La Penotiere, 26 Fla., 33; 7 So. Rep. 869.

Duty of party to secure proper record.—Bridger v. Thrasher, 22 Fla., 383; Ormand v. Barnard, 5 Fla., 528.

Attestation and contents of transcript.—Transcript certified by clerk below the only one recognized by the Supreme Court.—Irving v. State, 19 Fla., 872. Maps and diagrams used below should accompany transcript.—Hogan v. Carruth, 18 Fla., 587. Transcript must contain every paper considered by court below.—Sedgwick v. Dawkins, 17 Fla., 555. What transcript must contain on appeal from order.—Zinn v. Dzialynski, 14 Fla., 43. Proper certificate of clerk.—Caulk v. Fox, 13 Fla., 147. Opinion of court below is no part of record.—McLeod v. Dell, 9 Fla., 427. Record badly made and interlined not received.—Pearson v. Grice, 8 Fla., 214. Supplying omission by oral admissions not approved.—Ib. Original papers cannot be substituted for transcript. Rabon v. State, 7 Fla., 9. How originals obtained if required.—Ib.

Withdrawal of transcript not certified by clerk below permitted.—Orange County High School v. Sanford, 17 Fla., 120.

Fb., Sec. 8.

1706. (1276.) Filing assignment of errors.—The plaintiff in error shall file in the appellate court his assignment of errors within three days after the filing of the copy of the record. If this be omitted, except for good cause shown, the writ of error shall, on motion of the defendant in error, be dismissed, unless the court shall allow further time.

In the absence of, and of apparent error, judgment affirmed on motion.—Stowe v. Mapes Formula, etc., Co. 21 Fla., 153. Dismissal for failure to file.—Endel v. Walls, 18 Fla., 698. When is indefinite, assignment not available.—Emerson v. Ross' Extrs., 17 Fla., 123. Waiver of errors assigned by

not including in brief.—Southern Express Company v. Van Meter, 17 Fla., 783. Not connected with, or necessary to the merits of cause, not considered. —Doggett v. Willey, 6 Fla., 483. Mere abstraction not considered.—McKay v. Lane, 5 Fla., 268.

ARTICLE 6.

DUTY OF APPELLATE COURT.

In examining record and giving judgment. Section..... 1707
In causing execution of its decrees. Section..... 1708
To quash writs of error. Section..... 1709

1707. (1277.) In examining record and giving judgment.—It shall be the duty of the court on an appeal or writ of error to examine the record, to reverse or affirm the judgment, sentence or decree of the court below, or to give such judgment, sentence or decree as the court below ought to have given, or as to it may appear according to law. Ib., Sec. 5.

As to power to give judgment which ought to have been given by court below.—Pearce v. Jordan, 9 Fla., 526; Southern Life Insurance Company v. Cole, 4 Fla., 359.

1708. (1278.) In causing execution of its decrees.—The appellate court may order the record of the judgment appealed from, with its decision and determination thereon in writing duly certified, to be remitted to the court from which the writ of error shall have been taken; and the said decision and determination shall be carried into execution by the officers of the said court, a quo, or the appellate court may award execution to carry into effect its decision and determination. Ib. Sec. 6.

1709. (1279.) Power to quash writs of error.—Courts of error shall have power to quash proceedings in error in all cases in which error does not lie, or where they are taken against good faith or merely for delay, and may decree in such case damages against the plaintiff in error not exceeding ten per cent. Ib., Sec. 13; Ch. 1096, Sec. 50, Feb. 8, 1861.

Damages for delay only awarded on hearing on merits.—Thrasher v. Bank, 23 Fla., 44; 1 So. Rep. 338. And only when delay clearly purpose of appeal.—Ib., 346. Instances where damages given.—Stafford v. Anders, 10 Fla., 211; Richards v. Nall, 8 Fla., 369. Liability of sureties upon appeal bond for such damages.—Raney v. Barrow, 1 Fla., 327.

ARTICLE 7.

APPELLATE PROCEEDINGS IN PROBATE MATTERS.

1710. (1280.) To be as in appeals in chancery.—Appeals from the county judge to the circuit court in matters pertaining to his probate jurisdiction and in the management of the estates of infants, and from the circuit court to the Supreme Court in such matters arising before the county judge, shall be governed in all respects by the law and rules regulating appeals in chancery.

1711. To be in writing and recorded.—When such appeal is from the order, judgment or decree of the county judge to the circuit court and shall be made in open court, it shall be in writing and recorded immediately following after and in the same book where record is made of such order, judgment or decree, and it shall likewise be in writing if made after the entry of the judgment, order or decree in vacation and shall as near as practicable be likewise recorded.

1712. (1461 Revised.) Citation, issuance and service of.—If the notice be given in open court, no further notice shall be required; but if it be given in vacation, the clerk or judge of said court shall issue to the appellee a citation, which shall be returnable, and shall be served in like manner and time, as writs of sci. fa. ad. aud. errores in the cases.

Feb. 10, 1832, Sec. 3.

Appeal must be in writing.—State ex rel. v. Cooper, 20 Fla., 547.

(Supersedeas in certain of such cases: See Sec. 1910.)

DECISIONS (NOT ELSEWHERE NOTED) UPON APPELLATE PROCEEDINGS AND PRACTICE.

Notice of appeal drawn up by solicitor for appellant and service accepted by appellee not sufficient to give jurisdiction to the court.—Dillard et al. v. Agnew et al., 37 Fla., 56; 19 So. Rep., 338. Transcript.—Failure of clerk to properly prepare transcript no excuse to attorney.—Ellsworth v. Haile, et al., 29 Fla., 256; 10 So. Rep. 612. Complaint of ruling not appearing from the transcript not considered by appellate court.—McCune v. State, 42 Fla., 192; 27 So. Rep. 867.

Who may appeal.—Defendant after satisfaction of judgment.—Burrows v. Mickler, 22 Fla., 572. Party to reverse his own judgment.—Hale v. Crowells' admr., 2 Fla., 534. Only party to suit, privy or person injured.—Howse v. Jordan, 1 Fla., 133; Ballard v. Kenny, 34 Fla., 383; 16 So. Rep. 327; Witt v. Baars, 36 Fla., 119; 18 So. Rep. 330.

Who cannot appeal.—Individual stockholder cannot appeal from judgment against corporation.—State v. F. C. R. R. Co., 15 Fla., 690.

Necessary parties.—All parties defendant unless there be summons and severance.—Knight v. Weiskoph, 20 Fla., 140; Standard v. Jaffray, 13 Fla., 596. All creditors on appeal from order on motion to apply funds in hands of

sheriff.—Zinn v. Dzialynski, 14 Fla., 187. Must be same as in judgment below.—Loring v. Wittich, 16 Fla., 323.

Improper parties.—Executor, unless party below.—State v. F. C. R. R. Co., 16 Fla. 690.

Dismissal and re-instatement of appellate proceedings. Instances of dismissals.—Refusal to deposit supreme court clerk's fees.—Johnson v. County of Polk, 23 Fla., 58; 1 So. Rep. 334. For misrecital of judgment in bond.—Pittman v. Myrick, 16 Fla., 401. When no appeal or writ of error, court will not sit as arbitrator.—Pearce v. Jordan, 9 Fla., 526; Rabon v. State, 7 Fla., 9; Bluett v. Extrs. of Nicholson, 1 Fla., 384. Instances of refusal to dismiss.—For want of motion for a new trial or want of bill of exceptions.—Stewart v. Mathis, 19 Fla., 752; Same v. King, 18 Fla., 552. For deficiencies in record, remedy in such cases.—Underwood v. Underwood, 12 Fla., 432. Effect of—when does not bar a second proceeding.—Johnson v. Polk County, 24 Fla., 28; 3 So. Rep. 414. Re-instatement.—Allen v. Tyson, 18 Fla., 628. When not re-instated.—Williams v. J., T. & K. W. R. R. Co., 25 Fla., 359; 5 So. Rep. 847; Allen v. Tyson, 18 Fla., 628; Harris v. Ferris, 18 Fla., 81.

Presumption in favor of court below.—Baker v. Chatfield, 23 Fla., 540; 2 So. Rep. 822; Frisbee, v. Timanus, 12 Fla., 537; Ahrens v. Willis, 6 Fla., 359; Miller v. Kingsberry, 8 Fla., 356; Proctor v. Hart, 5 Fla., 465; Horne's extrs. v. Gartman, 1 Fla., 63. That entry for default for want of plea was inadvertent, plea having been filed.—Miller v. Hoc, 1 Fla., 189.

Certiorari upon suggestion of diminution.—When it does and does not lie.—Hanover, etc., Ins. Co. v. Lewis, 22 Fla., 568; Caulk v. Fox, 13 Fla., 147.

What appellate court will consider.—Whole charge upon exception to part.—Andrews v. State, 21 Fla., 598; Willingham v. State, 21 Fla., 761. When evidence on writ of error.—Randle v. Parramore, 1 Fla., 509. Whole paragraph of charge on exception to part.—Smith v. Bagwell, 19 Fla., 117. On subsequent appeal of same cause.—Wilson v. Friedenberg, 21 Fla., 386; M. L. & B. A. v. Price, 19 Fla., 127. Sometimes error apparent although no assignment or bills of exceptions.—Bridier v. Yulee, 9 Fla., 481.

Reversals. Instances of reversals.—For want of rejoinder to replication to plea of non-damnificatus.—Miller v. Hoc, 1 Fla., 189. For want of joinder of issues on plea of new matter.—Gunning v. Heron, 25 Fla., 849; 6 So. Rep. 856; Livingston v. L'Engle, 22 Fla., 427. For trial of one plea without disposing of others.—Gunning v. Heron, 25 Fla., 849; 6 So. Rep. 856; Benbow v. Marquis, 17 Fla., 441. For trial when demurrer to declaration undisposed of and no plea.—F. R. & N. R. R. Co. v. Rhodes, 23 Fla., 309; 2 So. Rep. 621; Nelson v. McLaurin, 14 Fla., 45. Judgment in excess of amount laid in declaration.—Cooper v. Livingston, 19 Fla., 684. When issues or pleadings not intelligible to jury.—Pearce v. Jordan, 9 Fla., 526. For submission to issue on one plea when other unabandoned pleas are undisposed of.—McKinnon v. McCollum, 6 Fla., 376. For error shown in one of two appeals to entire judgment.—M. L. & B. A. v. Price, 19 Fla., 127. Instances of refusal to reverse.—For unprejudicial error in sustaining demurrer.—Joseph v. Salomon, 19 Fla., 623. For want of issue on plea when plea is insufficient.—Forcheimer v. Holley, 14 Fla., 239. For overruling demurrer to pleas when bill of exceptions does not show that evidence was introduced under them.—Pollak v. Hutchinson, 21 Fla., 128. For errors waived or procured by party complaining.—Mitchell v. Chaires, 2 Fla., 18; Proctor v. Hart, 5 Fla., 465; Huling v. Florida Savings Bank, 19 Fla., 695; Tuten v. Gazen, 18 Fla., 751; Jenkins v. Merritt, 17 Fla., 318. Not for error in pleadings if in other distinct pleadings a bar to action appears.—Mitchell v. Chaires, 2 Fla., 18. Because issue on bad plea to good count undisposed of, issues upon plea to good

count having been disposed of.—Gregory v. McNealy, 12 Fla., 578. Nor because of issue undisposed of when considered waived.—Judge v. Moore, 9 Fla., 269. Upon defense raised for first time in appellate court.—Pons v. Hart, 5 Fla., 457. When appellate court is equally divided.—Fraser v. Willey, 2 Fla., 116. Because court did not dispose of a plea which was nullity.—Stewart v. Bennett, 1 Fla., 437. What objections cannot be raised primarily in appellate court.—Redmond v. Donaldson, 35 Fla., 167; 17 So. Rep. 70; Logan v. Slade, 28 Fla., 699; 10 So. Rep. 25.

Re-hearings. What application for should contain.—First National Bank v. Ashmead, 23 Fla., 379; 2 So. Rep. 657-665; Jones v. Fox, 23 Fla., 462; 2 So. Rep. 853. When granted, even though personnel of court has changed.—Lines v. Darden, 6 Fla., 37. When not granted.—State ex rel. v. Barnes, 25 Fla., 86; 5 So. Rep. 703; Hart's extrs. v. Stribling, 25 Fla., 453; 6 So. Rep. 455; Sauls v. Freeman, 24 Fla., 225; 4 So. Rep. 577; Doggett v. Jordan, 4 Fla., 21. Cannot be granted by the Legislature.—Trustees v. Bailey, 10 Fla., 238. What considered upon.—Christie v. Burch, 25 Fla., 978; 6 So. Rep. 857. Amendment of form which ought to have been considered as made.—McKay v. Frieble, 8 Fla., 21. Should be applied for during term.—Horne v. Gartman, 1 Fla., 197. Continuance of.—What order should accompany.—Doggett v. Jordan, 4 Fla., 121.

CHAPTER XXVI.

LIMITATION OF ACTIONS.

ARTICLE 1.—Provisions applicable to all classes of actions. Sections..1713-1717
2.—Provisions applicable to real actions. Sections.....1718-1724
3.—Provisions applicable to actions other than real actions, Sections 1725-1726

ARTICLE 1.

PROVISIONS APPLICABLE TO ALL CLASSES OF ACTIONS.

Ch. 1869 Sec. 13, Feb. 2, 1872.

1713. (1282.) What deemed the commencement of action.—An action shall be deemed to be commenced, within the meaning of this chapter, when the summons or other original process shall be delivered to the proper officer to be served.

Ib., Sec. 20.

1714. (1283.) Actions not affected by limitations.—This chapter shall not apply to any action by this State, or by any officer or person in behalf of this State, or to any action by or on behalf of the Trustees of the Internal Improvement Fund, or the seminary or school fund, or the Board of Education of the State, or any county or municipal corporation, or school district within this State, or with

respect to any moneys or property held or collected by any officer or trustee or his sureties.

1715. (1284.) Extensions in time of limitations.—

1. Actions by Representatives of Decedents.—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives after the expiration of that time and within six months from the issuing of letters testamentary or of administration. Ib., Sec. 18.

2. Actions Against Representatives of Decedents.—If a person against whom a suit not relating to land may be brought, or judgment exists, die, such suit shall not be brought, nor proceedings taken upon such judgment, against his executor or administrator after two years from the issuance of letters testamentary or of administration. After ten years from the death of any person, his estate shall not be liable for any of his debts unless letters testamentary or of administration shall have been taken out within said ten years.

3. Action After Reversal of Plaintiff's Judgment.—If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal or writ of error, the plaintiff, or, if he die and the cause of action survives, his heirs or representatives, may commence a new action within one year after the reversal. Nov. 10, 1828, Sec. 16.

When not applicable.—Doyle v. Wade, 23 Fla., 90; 1 So. Rep. 516.

4. Absence of Defendant from the State.—If, when the cause of action shall accrue against a person, he is out of the State, the action may be commenced within the term herein limited after his return to the State; and if after the cause of action shall have accrued he depart from the State, the time of his absence shall not be part of the time limited for the commencement of the action. Ch. 1869, Sec. 14, Feb. 27, 1872.

1716. (1285.) Who may avail himself of disabilities.— No person shall avail himself of a disability unless it existed when the cause of action accrued. Ib., Sec. 17.

1717. Promise to pay debts barred—must be in writing. Every acknowledgment of, or promise to pay a debt barred by the statute of limitations, must be in writing and signed by the party to be charged. Ch. 4575, Acts of 1895.

ARTICLE 2.

PROVISIONS APPLICABLE TO REAL ACTIONS.

Ch. 1869, Acts of 1872, Sec. 2.

1718. (1287.) Action for the recovery of real property. No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within seven years before the commencement of such action.

Ib., Sec. 3.

1719. (1288.) Actions founded on the title to real property.—No cause of action or defense to an action founded upon the title to real property, or to rents, or to service out of the same, shall be effectual unless it appear that the person prosecuting the action, or making the defence, or under whose title the action is prosecuted or the defence is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within seven years before the accruing of the right of action or defence in respect to which such action is prosecuted or defence made, or unless it appear that the title to such premises was derived from the United States or the State of Florida, within seven years before the commencement of such action; and the period of limitation shall not begin to run until the passage of the title from the State or the United States.

Ib., Sec. 4.

1720. (1289.) Possession by legal owner presumed.—In every action for the recovery of real property, or of the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for seven years before the commencement of such action.

Applied.—Kendricks v. Latham, 25 Fla., 819; 6 So. Rep. 871; Levy v. Cox, 22 Fla., 546; Caro v. Pensacola City Co., 19 Fla., 776. Possession must be continuous without interruption. Townsend's Administrators v. Edwards, 25 Fla., 582; 6 So. Rep., 212. Must show adverse possession in defendant.—Wade v. Doyle, 17 Fla., 522. Not sufficient to show want of seizin or possession in plaintiff.—Ib. Possession of person contracting to buy not adverse.—Hart v. Bostwick, 14 Fla., 16.

1721. (1290.) Adverse possession under color of title.—

Ib. Sec. 5.

1. Continued Occupation for Seven Years Required.—Whenever it shall appear that the occupant, or those under

whom he claims, entered into possession of premises under the claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment for seven years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

What is color of title.—Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871; Sanford v. Cloud, 17 Fla., 557. Color of title does not require rightful title.—Carn v. Haisley, 22 Fla., 317. Continuous adverse possession required.—Sloan v. Sloan, 25 Fla., 53; 5 So. Rep. 603. Such possession defined.—Doyle v. Wade, 23 Fla., 90; 1 So. Rep. 516.

2. Definition of Possession and Occupation Required.—For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied, in the following cases: Ib., Sec. 6.

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial enclosure.

3. Where (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purpose of husbandry, or for the ordinary use of the occupant; or

4. Where a known lot or single farm has been partly improved, the portion of such farm or lot which may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

A "40" is a known lot.—Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871. Extent of constructive possession.—Doyle v. Wade, 23 Fla., 90; 1 So. Rep. 516.

1722. (1291.) Adverse possession without color of title.—

1. To Be Land in Actual Occupation Only.—Where it shall appear that there has been an actual continued occupation for seven years of premises under a claim of title exclusive of any other right, but not founded upon a written instrument, or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely. Ib., Sec. 7.

Privity required between successive adverse occupants. What it is and how created.—Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871. No color

or rightful title required for adverse possession.—Horne v. Carter's admr., 20 Fla., 45.

Ib., Sec. 8.

2. Definition of Occupation and Possession Required.—For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only: 1. Where it has been protected by substantial enclosure; or, 2., where it has been usually cultivated or improved.

Applied.—Seymour v. Creswell, 18 Fla. 29.

Ib., Sec. 9.

1723. (1292.) Actions of persons under disability.—If a person entitled to commence any action for the recovery of real property, or to make an entry or defence founded on the title to real property, or to rents or services out of the same, be, at the time such title shall descend or accrue, either: 1, within the age of twenty-one years; 2, insane; or 3, imprisoned, the time during which said disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defence; but such action may be commenced, or entry or defence made, within the period of seven years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defence made, after that period.

But adverse possession as hereinbefore defined for thirty years shall confer title even as against persons under the disabilities mentioned in this section.

A married woman may prosecute any action concerning her land, in her own name, and without joining her husband.

The saving applies only to persons to whom title first accrues.—Wade v. Doyle, 17 Fla., 522. When statute once begins to run it continues to run.—Ib. Rejoinder of existence of guardian to replication of infancy to plea of statute is not good.—Lanier v. Chappel, 2 Fla., 621.

Ch. 3134, Sec. 1, Mch. 11, 1879.

1724. (1293.) Limitation in favor of purchasers at executor's, etc., sales.—The title of any purchaser or his assigns who shall have held possession for five years of any real estate purchased for full value at any sale, free from fraud, made by an executor, administrator or guardian, shall not be questioned by any heir, distributee or ward upon the ground of any irregularity in the proceedings or conveyances, if it appear that the proceeds of such sale have been applied bona fide to the object and purpose for which said sale shall have been made; nor shall such title be questioned by any one else who has received the money to which he was entitled, arising from said sale.

To what sales applicable.—Dean's admr. v. Wilcoxson, 25 Fla., 980; 7 So. Rep., 163.

ARTICLE 3.

PROVISIONS APPLICABLE TO ACTIONS OTHER THAN REAL ACTIONS.

1725. 1294.) Limitations.—Actions other than those for the recovery of real property can only be commenced as follows: Ch. 1869, Sec. 10, Feb. 27, 1872.

1. Within Twenty Years.—An action upon a judgment or decree of a court of record in the State of Florida, and an action upon any contract, obligation, or liability founded upon an instrument or writing under seal.

Applied to foreclosure of mortgage on barred note.—Jordan v. Sayre, 24 Fla., 1; 3 So. Rep. 329. Promissory note with seal is a sealed instrument.—Comerford v. Cobb, 2 Fla., 418.

2. Within Seven Years.—An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States, or of any foreign country. Ch. 3900, Sec. 1, May 14, 1889.

3. Within Five Years.—An action upon any contract, obligation or liability founded upon an instrument of writing not under seal.

4. Within Four Years.—Any action for relief not specifically provided for in this chapter. Ch. 1869, Sec. 10, Feb. 27, 1872.

Store account defined.—Solomon v. Pioneer Co-operative Company, 21 Fla., 374. This section applies to suits for dower and mesne profits.—Branch v. Cole, 18 Fla., 368.

5. Within Three Years.—1. An action upon a liability created by statute, other than a penalty of forfeiture; 2, an action for trespass upon real property; 3, an action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property; 4, an action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud; 5, and an action upon a contract, obligation or liability not founded upon an instrument of writing, including an action for goods, wares and merchandise sold and delivered, and on store accounts. Ib., Sec. 10.

Applied to action for trespass to reality.—S., F. & W. R. R. Co. v. Davis, 25 Fla., 917; 7 So. Rep. 917. What is cause of action for goods sold.—Tate v. Clemens, 16 Fla., 340.

6. Within Two Years.—An action by another than the State upon a statute for a penalty or forfeiture; an action for libel, slander, assault, battery or false imprisonment. Ibid.

7. Within One Year.—An action by the State for a penalty or forfeiture under a penal act of the Legislature. Ibid.

An action arising upon account of an act causing the wrongful death, and on account of wrongful death, of child.

In Cases of Mutual Account.—In an action brought to recover a balance due upon a mutual, open and current account where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

Ib., Sec. 18.

1726. (1295.) Causes of action arising out of the State. When the cause of action has arisen in another State or Territory of the United States, or in a foreign country, and by the laws thereof an action thereon cannot be maintained against a person by reason of the lapse of time, no action thereon shall be maintained against him in this State.

Statutes of limitation generally.—Limitations in equity. Stale claim.—Sanchez v. Dow. 23 Fla., 445; 2 So. Rep. 842; Howe v. Robinson, 20 Fla., 353. No fixed rule in equity.—Amos v. Campbell, 9 Fla., 187. Effect of promise or admission of co-partners after dissolution.—Tate v. Clemens, 16 Fla., 340. Right of Legislature to change as to existing rights.—Hart v. Bostwick, 14 Fla., 162. Statute does not run in case of trustee.—Brown v. Alston, 8 Fla., 307. What trusts are included.—Carter v. Bennett, 6 Fla., 214. Begins to run when cause of action accrues.—Bennett v. Herring, 1 Fla., 387.

Various matters concerning limitations.—A foreclosure is not barred because action at law barred upon the note secured by the mortgage.—Jordan v. Sayre, 24 Fla., 1; 3 So. Rep. 329.

Statute of twenty years.—Applicable to a county warrant under seal.—Johnson v. Wakulla Co., 28 Fla., 720; 9 So. Rep. 690. And to a mortgage under seal.—Jordan v. Sayre, supra.

In what cases not affected by death.—Sammis v. Wightman, 31 Fla., 10; 12 So. Rep. 526; Coe v. Finlayson, 41 Fla., 169; 26 So. Rep. 704.

Effect of presentation of claim to administrator.—Sanderson v. Sanderson, 17 Fla., 820; Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163; Barnes v. Scott, 29 Fla., 285; 11 So. Rep. 48.

Construction of phrase beyond seas in tax-title limitation.—Keech v. Enriquez, 28 Fla., 597; 10 So. Rep. 91.

Adverse holding by life tenant does not affect remaindermen without clear proof of knowledge brought home to them.—Anderson v. Northrop, 30 Fla., 612, 12 So. Rep. 318.

New suit after reversal on appeal.—Henderson v. Chaires, 35 Fla., 423; 177 So. Rep. 574.

When heirs are barred by reason of administrator being barred.—Mathews v. Durkee, 34 Fla., 559; 10 So. Rep. 411.

Adverse possession generally.—Possession under executory contract.—Successive occupants.—Coogler v. Rogers, 25 Fla., 854; 7 So. Rep. 391. Mortgagor's possession not adverse to mortgagee.—Jordan v. Sayre, 24 Fla., 1; 3 So. Rep. 329. Special plea of adverse possession not allowable; not guilty covers.—Neel v. Spooner, 20 Fla., 38; Barco v. Fennell, 24 Fla., 378; 5 So. Rep. 9; Wade v. Doyle, 17 Fla., 522; Coffee v. Groover, 20 Fla., 64; Weiskoph v. Dibble, 18 Fla., 24. Adverse possession for seven years confers title.—Horne v. Carter's admr., 20 Fla., 45; Sanford v. Cloud, 17 Fla., 557. Possession must continue for seven years.—Simmons v. Spratt, 20 Fla., 495.

Possession in case of disputed boundaries.—Seymour v. Creswell, 18 Fla., 29. Time running under foreign statutes cannot be tacked to time under domestic statutes.—Perry v. Lewis, 6 Fla., 555. Effect of foreign statutes.—Ib.

Adverse possession.—Definition of notorious possession.—Watson v. Morrison, 33 Fla., 261; 14 So. Rep. 805.

When possession of vendee is not adverse.—Gamble v. Hamilton, 31 Fla., 401; 12 So. Rep. 229; Spratt v. Livingston, 32 Fla., 507; 14 So. Rep. 160; Coogler v. Rogers, 25 Fla., 853; 7 So. Rep. 391.

Possession of mortgagor not adverse to mortgagee.—Jordan v. Sayre, 24 Fla., 1; 3 So. Rep. 329.

Must be continuous and uninterrupted.—Keech v. Enriquez, 28 Fla., 597; 10 So. Rep. 91; Townsend v. Edwards, 25 Fla., 582; 6 So. Rep. 212.

Broken by ouster under process.—Gould v. Carr, 33 Fla., 523; 15 So. Rep. 259.

Possession of successful occupant.—Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871; Coogler v. Rogers, 25 Fla., 853; 7 So. Rep. 391.

No constructive possession without color of title.—Doyle v. Wade, 22 Fla., 90; 1 So. Rep. 516.

Sheriff's deed is color of title.—Kendrick v. Latham, supra.

Begins to run from date of patent from the United States.—Hagan v. Ellis, 39 Fla., 463; 22 So. Rep. 727.

Attornment by tenant to stranger.—Wynn v. Strickland, 34 Fla., 610.; 16 So. Rep. 606; possession by one cestui que trust.—Ib.

Of tenant who disowns his landlord's title.—Wilkins v. Pensacola City Co., 36 Fla., 36; 18 So. Rep. 20.

When possession by devisee under execution is not adverse.—Jones v. Shomaker, 41 Fla., 231; 26 So. Rep. 191.

CHAPTER XXVII.

LEGAL AND OFFICIAL ADVERTISEMENTS.

ARTICLE 1.—Publication of. Sections.....1727-1728
2.—Rates of advertising. Section.....1729

ARTICLE 1.

PUBLICATION OF.

1727. (1296.) Where to be published.—Official and legal advertisements relating to any proceeding in any court in this State, and all legal notices and advertisements of sheriffs and tax collectors, shall, unless otherwise provided

Ch. 3022, Sec. 2, Feb. 27, 1877.

by law, be published in some newspaper published in the county where such publication is required to be made.

1728. (1297.) Substitution of one county for another. When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement shall be made by publication in the nearest county in which a newspaper is published, and by posting at the court house and at three other public places in the county.

ARTICLE 2.

RATES FOR ADVERTISING.

1729. (1298.) Amounts chargeable.—The publisher of any paper publishing any official notice or legal advertisement shall not charge more than one dollar per inch for the first insertion, and fifty cents per inch for each subsequent insertion, in single column, nonpareil type; and when any official notice or legal advertisement is required by law to be published more than two months, the charge shall not exceed three-fourths of the above rates for all the excess of time, above two months, of said publication.

Ib., Sec. 3.

CHAPTER XXVIII.

OATHS.

1730. (1299.) By whom to be administered.—

1. In This State.—Judges and clerks of the Supreme Court, circuit courts, judges of probate, justices of the peace and notaries public of this State, are authorized to administer oaths in all cases in which by law oaths are required to be administered.

Ch. 48, Sec. 1, Dec. 3, 1845.

2. In Other States and Territories and in the District of Columbia.—The administration of any oath to any person by any judge or clerk of any supreme court, circuit court, chancery court, or a notary public, of any State or Territory of the United States, or of the District of Columbia, shall be as

effectual when authenticated by the signature and official seal of such officer administering such oath as if it had been administered by a like officer of this State.

3. In Foreign Countries.—The administration of any oath to any person by any judge of a court of last resort or by a notary public of any foreign country, or by any minister, consul-general, charge d'affaires, or consul of the United States resident in such country, shall be as effectual when authenticated by the signature and official seal of such officer administering such oath as if it had been been administered in this State by any officer authorized to administer it.

1731. (1300.) Affirmation equivalent to oath.—Whenever an oath shall be required by any law of this State in any proceeding, an affirmation may be substituted therefor.

1732. Oath in judicial proceeding.—Any oath or affirmation required in any judicial proceeding at law or in chancery if made before any officer authorized by law to administer oaths shall have the same force and effect as if administered by the clerk or judge or court in which the proceeding is pending: Provided, No attorney of record in any case or proceeding, civil or criminal, shall administer any oath in any such case or proceeding, except oaths to witnesses before a jury in open court upon trial of such matter, although such attorney may be an officer authorized by law to administer oaths.

(See administration of oaths by attorneys-at-law: Section 1353.)

CHAPTER XXIX.

COSTS IN CIVIL CASES.

Security for costs. Section..... 1733
Taxation of. Section..... 1734
Record of Section..... 1735
Recovery of, from losing party. Section..... 1736
Unlawful exaction of prohibited. Section..... 1737
Publicity given to fee bills. Section..... 1738

1733. (1301.) Security of costs by non-resident.—Whenever a complaint or plaintiff, who is a non-resident, shall commence a suit in any of the courts of this State, or whenever a complainant or plaintiff, after the institution of a suit, shall remove himself or his effects out of this State,

Nov. 23, 1828. Sec. 8.

Nov. 21, 1829. Sec. 4.

it shall be the duty of himself, or his agent, or attorney, to file in the court in which said suit is brought a bond with approved security in the sum of one hundred dollars, conditioned for the payment of all costs and charges which may be adjudged against him in said suit; and, upon a failure to file such bond and security within thirty days after such commencement, or such removal, the defendant may, after thirty days' notice to the plaintiff or his attorney (during which the plaintiff may file such bond), move to dismiss the suit for want of such security, or may hold the attorney bringing or prosecuting said suit liable for said costs and charges; and if they be adjudged against said plaintiff, an execution may issue against said attorney for the same.

Ch. 78, Secs. 5, 6, Jan. 6, 1847.

1734. (1302.) Taxation of costs.—The clerks of the several courts, or the judge if there be no clerk, shall tax the costs accruing in each case when the same is determined or at the close of each term of the court, and shall keep a duplicate of the bill of costs on file among the original papers in the suit. In such bill each item of costs shall be enumerated.

Ch. 3252, Secs. 1, 2, Mch. 7, 1881.

1735. (1303.) Record of costs.—All officers of this State who are allowed to charge fees and costs shall keep a book in which they shall record an itemized account of all the costs and fees which they charge against parties having business with them. Said book shall be at all times open for inspection of parties wishing to examine the costs charged for any service rendered by said officer or officers.

Nov. 23, 1828, Sec. 71.

1736. (1304.) Recovery of costs from losing party.—In all cases the party recovering the judgment shall recover also all his legal costs and charges, which shall be included in the judgment; but this section shall not be construed to relate to executors or administrators in cases wherein by law they are not liable to costs of suit.

Such costs may be collected:

1. By execution upon the judgment aforesaid; or

Ch. 73, Sec. 7. Mch. 7, 1881.

2. By delivery to the sheriff of a taxed bill of costs approved by the judge of the court wherein the services have been rendered, which bill shall have the force and effect of an execution, and shall be collected by the sheriff as in other cases of execution.

In equity costs do not always follow judgment.—Myers v. Coiner, 22 Fla., 472; White v. Walker 5 Fla., 479; Lewis v. Yale, 4 Fla., 441.

1737. (1305.) Prohibition against unlawful exaction of costs.—

1. Prohibition.—No officer shall make two charges for the same official act or service, nor charge for any constructive service; and no fees shall be charged in any case, or for any official service performed or claimed to be performed by any officer within the State, unless said fees be expressly authorized and their amount be specified by law. Ib., Sec. 8; Ch. 1535, Secs. 3, 4, Dec. 11, 1866.

2. Penalty.—When any officer shall wilfully charge or levy more than he is really entitled to, such officer shall forfeit and pay to the party injured four times the amount so unjustly claimed, to be recovered on motion before the court wherein the services were rendered. Ch. 73, Sec. 2, Jan. 6, 1847.

RECOVERY OF ILLEGALLY EXACTED COSTS.

1. Summary Proceedings.—Any person feeling aggrieved by any charge made for costs by any such officer shall have the correctness of the same determined by a court and jury, on giving five days' previous notice to the officer making such objectionable charge, stating in said notice the time and place when and where the same shall be inquired into; and it shall be the duty of the clerk of the court, or the judge if there be no clerk, before which such officer is notified to appear, to enter such cause for trial on the day specified in the notice aforesaid, and said cause shall be tried on that day unless postponed by the court. Mch. 10, 1843, Sec. 4.

2. Oath of Jury.—There shall be administered to the jury empaneled to try the legality of such charge, the following oath: Ib. Sec. 5.

"You and each of you do solemnly swear that you will truthfully and faithfully examine whether in matter of controversy between ..... and ...., said .... has been guilty of extortion, and a true verdict render. So help you God."

3. Verdict and Judgment.—If the jury find for the plaintiff, they shall find the amount which has been improperly collected, and thereupon the court in which such trial is had shall enter up judgment for four times the amount found by the jury as aforesaid, in favor of the plaintiff, on which judgment execution shall issue as in other cases. Ib., Sec. 6; Ch. 73, Sec. 2, Jan. 6, 1847.

1738. (1306.) Publicity given to fee bills.—The Attorney-General is required to prepare and cause to be printed Ch. 3697, secs. 1, 2, Jan. 31, 1887.

a sufficient number of copies of fee bills of the various officers of the several counties of this State, and send, or cause to be sent, copies of said fee bills to all county officers in this State. Such officers shall keep posted in a consqicuous place in their offices such fee bills, for the information of persons having business with them.

Costs that should not be taxed against defendant—McCarthy v. Harris, 23 Fla., 508; 2 So. Rep. 819; Woodford v. Alexander, 35 Fla., 333; 17 So. Rep. 658. When should be taxed against a negligent sheriff.—Lawyers, etc., Co. v. Bennett, 34 Fla., 302; 16 So. Rep. 185.

CHAPTER XXX.

OF LEGAL TIME.

Ch. 3916, Sec. 1, May 5, 1889.

1739. (1307.) Standard time adopted.—Whenever specific hours are designated in the statutes of this State, during which legal proceedings may be had, the same shall be understood to mean standard time of the central or 90th meridian.

Fractions of a day when not regarded.—Savage v. State, 18 Fla., 970. Method of computing time when to be computed from particular day.—Ib.

TITLE II.

SUPREME COURT.

OF PROVISIONS APPLICABLE ONLY TO THE SUPREME COURT.

CHAPTER 1.—Its statutory powers. Sections.....1740-1741
2.—Its justices, numbers, opinions and election. Sections..1742-1744
3—Its terms. Sections.....1745-1747
4.—Its records. Sections.....1748-1749
5.—Its clerk. Sections.....1750-1755
6.—Its sheriff. Sections.....1756-1758
7.—Its seal. Section..... 1759
8.—Its decisions, and reports thereof. Sections.....1760-1771
9.—Its library. Sections.....1772-1774
10.—Costs therein and execution therefor. Sections.....1775-1776

CHAPTER I.

ITS STATUTORY POWERS.

1740. (1308.) Powers to make rules and regulations— The Supreme Court shall have the following powers, and action taken by it thereunder shall have the force of law until otherwise provided by the Legislature, to-wit: Ch. 1626, Sec. 3, Aug. 1, 1868.

1. To make, etc., rules of practice. Ibid.

To make, amend, annul, or modify rules of practice or pleading of a supreme court or any other court, as it may see fit, not inconsistent with law. Ch. 1938, Sec. 12, Feb. 24, 1873.

Can make rule requiring deposit or bond to cover clerk's costs.—Robinson v. Roberts, 16 Fla., 156.

2. To make, etc., rules relating to process.

To make rules for the issuing and return of process in all courts, not inconsistent with law. Ch. 1626, Sec. 3, Aug. 1, 1868.

3. To regulate entry of judgments.

To regulate the manner in which judgments may be entered in all courts, such regulations to be not inconsistent with law. Ibid.

4. To make and prescribe forms.

To make and prescribe such new or altered forms of practice, pleadings and proceedings for all courts of the State as it may think necessary. Ch. 1096, Sec. 75, Feb. 8, 1861.

1741. (1309.) Power to execute its decrees.—The Supreme Court is vested with all the power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters before it, agreeably to the usages and principles of law. Ch. 1626, Acts 1868, Sec. 6.

CHAPTER II.

JUSTICES OF THE SUPREME COURT.

1742. To be six justices of the Supreme Court.—From and after the first Tuesday after the first Monday in June, 1905, the Supreme Court shall consist of six justices, who shall be elected by the qualified electors of the State at the time and place of voting for members of the Legislature, and Ch. 5124, Acts 1903, Sec. 1.

shall hold their office for the term of six years, except as hereinafter provided: Of the four justices who were elected at the general election, A. D. 1904, the one elected to succeed the then chief justice shall hold office for the term of six years, beginning on the first Tuesday after the first Monday in January, 1905, and the three who were elected to succeed the three additional justices provided for by the amendments of Sections 2 and 4 of Article V. of the Constitution, adopted at the general election held A. D. 1902, whose terms of office begin on the first Tuesday after the first Monday in June, A. D. 1905, one of whom to be designated by lot in such manner as the three may determine, who shall hold his office until the first Tuesday after the first Monday in January, A. D. 1909; another to be designated in like manner until the first Tuesday after the first Monday in January, A. D. 1909, and the third until the first Tuesday after the first Monday in January, A. D. 1911. Successors to the two remaining justices now in office shall be elected at the general election immediately preceding the expiration of their respective terms of office; so that two justices shall be elected at every general election thereafter for terms of six years, to begin on the first Tuesday after the first Monday in January after their election. The chief justice shall be designated by lot by the justices composing the court, and shall be such during his term of office: Provided, however, The present chief justice shall remain such during his term of office.

Sec. 2, Ib.

1743. Written opinions.—The Supreme Court may hear and determine cases and exercise any of its powers when sitting either in a body or in two divisions of three justices each, under such regulations as may be prescribed by the rules or by special orders of said court, not inconsistent with law; but in all cases where a written opinion is prepared by a division it shall before filing be submitted to the other division. The division to which such written opinion may be submitted shall not be required to examine the record, but may accept the conclusions of fact found by the other division and stated in the opinion or accompanying statement, and in all cases the division to whom the opinion is submitted shall examine the questions of law decided and discussed in the opinion and their applicability to the facts so stated. In all cases where written opinions are filed the names of the justices concurring, and of those dissenting, and not participating, if any, shall appear upon the opinion or opinions filed; and in every case where a written opinion is filed every qualified justice present shall be given an opportunity of concurring in or dissenting from the decision of matters discussed or decided therein.

1744. (1310.) Substitution of circuit judges for.— Whenever one or more justices of the Supreme Court shall be disqualified, or disabled on acount of interest, sickness or any other cause whatever, to hear and determine any cause or matter pending in said court or brought before it, the justices of said court not disqualified shall have power to call in a circuit judge or circuit judges, in the place of justice or justices so disqualified or disabled, and the clerk of the Supreme Court, upon the suggestion of said justices not disqualified, shall notify such circuit judge or circuit judges and request his or their attendance in said Supreme Court at the time to be named when the said cause or matter may be heard; and it shall be the duty of such circuit judge or circuit judges upon receiving such notice to attend at the time designated at the supreme court room, and the said circuit judge or judges shall be invested with full authority to hear and determine such cause or matter as a member of said Supreme Court. When the court shall consist of more than three justices, and shall be working in a body, and four or more of such justices are not disqualified or disabled as aforesaid, it shall not be necessary to call a circuit judge or circuit judges, but the remaining justices all participating may hear and determine the cause or matter: Provided, Three of them concur in the decision or opinion rendered, but if three do not so concur, at least one circuit judge shall be called in; and in all cases the justices not disqualified may in their discretion, call in a circuit judge or circuit judges in the place of any justice or justices disqualified or disabled as aforesaid, in any cause or matter pending in said Supreme Court. When the court shall consist of six justices and shall be working in divisions, any cause or matter wherein a justice or justices in one division is or are disqualified or disabled as aforesaid, may be considered and determined by the court working in a body as hereinbefore provided under like regulations as to calling in circuit judges, or it may be referred to and determined by the other division, if no member thereof is disqualified or disabled as aforesaid, but if any member thereof shall be so disqualified or disabled, or shall dissent upon any question, the cause or matter shall be referred to the court in a body for hearing and determination under like circumstances.

Ch. 1884, Sec. 1, Feb. 14, 1872; as amended by Sec. 1, Ch. 5123, Acts 1903.

CHAPTER III.

ITS TERMS.

Regular terms. Section.....1745
Special terms. Section.....1746
Attendance of justices. Section.....1747

Ch. 2051, Sec. 1, Mch. 4, 1875.

1745. (1311.) Regular terms.—The Supreme Court shall hold two terms in each year, in the supreme court room in the capitol, commencing respectively on the second Tuesday in January and June. The court may adjourn from time to time, as may be deemed necessary for the dispatch of business.

Effect of adjournment before and during term.—Wilson v. Lott, 5 Fla., 302.

Ibid.

1746. (1312.) Special terms.—The justices, or a majority of them, may appoint special terms to be held at such times as may be deemed necessary for the public interest.

Ch. 1626, Sec. 7, Aug. 1, 1868.

1747. (1313.) Attendance of justices.—If a quorum of of the justices shall not attend on the first day of the court, the clerk shall enter the fact upon his minutes, and the court shall stand adjourned until the succeeding day, and so on from day to day for six days; and if a quorum shall not appear for six days, all matters pending in said court shall stand continued as of course until the next term, and no matter or action shall thereby abate or be discontinued. If, however, one of the justices shall appear before the expiration of the sixth day, he may adjourn the court from time to time, for such time as may be deemed necessary to enable a quorum to be present, in which case all matters pending shall be continued until a quorum shall be present; but such justice may in the meantime hear and decide such matters as may be submitted, not involving the determination of cases. He may, however, hear and determine matters arising under writs of habeas corpus.

CHAPTER IV.

RECORDS OF THE SUPREME COURT.

Records of territorial court of appeals. Section.....1748
Its own records. Section.....1749

1748. (1314.) Record of territorial court of appeals.—The files, rolls and books of records of the courts of appeals of the late Territory of Florida, so far as the same by the concurrence of the Congress of the United States and of the Legislature of this State may relate to matters of appropriate State authority and jurisdiction, are placed in the custody and under the control of the Supreme Court of this State, and are files, rolls and records of the said Supreme Court; and the said court may lawfully have and exercise such judicial cognizance and power over them as it may lawfully have and exercise over its own files, rolls and records. Ch. 520, Sec. 1, Jan. 5, 1853.

Judgment of territorial court of appeals conclusive.—Brett v. Ming, 1 Fla., 447.

1749. (1315.) Its own records.—

1. The Making of Records.—The clerk shall keep in substantially bound books, fair and regular minutes of the proceedings of said court, a record of all its judicial acts, a docket of its cases, and such other books as the court may from time to time order or direct. Ch. 1137, Sec. 1, Feb. 8, 1861.

2. Custody Of.—All books, papers, records, files and the seal of the court shall be kept in the office of the clerk of said court.

Control over its records after term.—Trustees v. Bailey, 10 Fla., 238.

CHAPTER V.

CLERK OF THE SUPREME COURT.

His appointment and term of office. Section....1750
His bond. Section....1751
Location of office. Section....1752
His duties. Section....1753
His deputy. Section....1754
His compensation. Section....1755

1750. (1316.) His appointment and term of office.—He shall be appointed by the Supreme Court, or a majority of the justices thereof, and shall hold office during their pleasure.

1751. (1317.) His bond.—The clerk of the Supreme Court shall give bond in the sum of two thousand dollars, payable to the Governor, to be approved by two justices of Ch. 1626, Sec. 8, Aug. 1, 1868.

the court, conditioned for the faithful discharge of the duties of his office, and it shall be filed in the office of the Secretary of State.

Ch. 1137, Sec. 1, Feb. 8, 1861.

1752. (1318.) Location of his office.—He shall have his office in the capitol of the State in a room contiguous to the supreme court rooms to be assigned him for that purpose.

1753. (1319.) His duties.—

Ibid.

1. To Be Librarian.—He shall be librarian of the supreme court library.

2. To Be Custodian of Books, Etc.—He shall be custodian of all books, etc., mentioned in Sections 1748 and 1749.

3. To Keep Proper Minutes, Etc.—He shall keep the records of the court as provided in Section 1749.

4. His Duties Generally.—He shall do and perform all other things which by law or the rules of the court may appertain to his office.

Ib., Sec. 2.

1754. (1320.) Deputy of clerk of Supreme Court.—He may appoint a deputy who being duly sworn, may discharge all the duties of the office of clerk during his absence. The clerk shall in all cases be responsible for the acts of such deputy, and provide for his compensation.

Ch. 3053, Sec. 1, Mch. 2, 1877; Ch. 3106, Sec. 1, Mch 7, 1879, consolidated with Ch. 4031, Acts 1891.

1755. (1321.) Compensation and fees of clerk.—He shall, as librarian, receive a per diem equal to the sum of three hundred dollars per annum for his services; as clerk, he shall receive three dollars for each day of the year except Sundays; twelve dollars for each case docketed and decided; five dollars for each case docketed and dismissed by consent or for failure to perfect appeal; five dollars for each admission to the bar, and for copying and certifying records and papers, the same fees as are allowed clerks of the circuit courts: Provided, The opinions of the Supreme Court shall not be recorded, but the original as filed shall be preserved with the papers in each case. His accounts for copies of opinions, decisions, etc., furnished to the Attorney-General, shall upon approval by one of the justices be audited and allowed by the Comptroller, and paid by the Treasurer.

CHAPTER VI.

SHERIFF OF THE SUPREME COURT.

Sheriff of which county to be. Section.....1756
His duties. Section.....1757
His deputy. Section.....1758

1756. (1322.) Sheriff of county to be.—The sheriff of the county in which the court is held shall be the sheriff of the Supreme Court. Chap. 1626, sec. 9, Aug. 1, 1868.

1757. (1323.) His duties.—

1. To Attend Court, and Execute Process.—He shall in person, or by deputy, attend all sessions of the Supreme Court and serve all process required to be served. Ibid.

What "process" is meant.—William v. La. Penotiere.—25 Fla., 473; 6 So. Rep. 167.

2. To Procure Necessary Articles for Court and Clerk.—He shall, upon requisition by the chief justice, purchase all necessary articles to be procured for the use of said court and its clerk, upon the credit of the State, at such prices as shall be reasonable, fair and customary, at such places as he may be able to procure them; and his account for the same approved by the chief justice shall be audited and allowed by the Comptroller, and paid by the Treasurer. Ch. 219, Sec. 2, Jan. 5, 1849.

3. His Duties Generally.—He shall perform such other duties as the Supreme Court may require of him as its executive officer.

1758. (1324.) Deputy of sheriff of Supreme Court.—He may appoint a deputy in the county in which he resides, and all the sheriffs of the State shall ex-officio be his deputies in their respective counties for the execution of process from said court. Feb. 10, 1833. Sec. 11.

When sheriff of Supreme Court not entitled to mileage from State capital.—State v. Johnson, 35 Fla., 536; 17 So. Rep., 650.

Compensation. See Section 1683.

CHAPTER VII.

ITS SEAL.

1759. (1326.) Procurement, etc.—The seal of the Supreme Court shall be provided, approved, paid for, and replaced, and an impression thereof deposited, as are seals of the circuit court.

CHAPTER VIII.

DECISIONS AND REPORTS OF THE SUPREME COURT.

ARTICLE 1.—Its decisions. Sections.....1760-1762
2.—Its reports. Sections.....1763-1771

ARTICLE 1.

ITS DECISIONS.

Ch. 521, Sec. 7, Jan. 7, 1853.

1760. (1327.) Headnotes to be prepared by justice.—The justice of the Supreme Court of this State delivering the opinion of the court shall prepare and make a syllabus or statement of the points and principles intended to be decided by the court, which shall be filed with the opinion and published in the reports at the beginning of the opinion, in lieu of that usually prepared by the reporter.

When obiter dictum.—Hart's Executors v. Stribling, 25 Fla., 435; 6 So. Rep. 455.

Ch. 1137, Sec. 3, Feb. 8, 1861.

1761. (1328.) Decisions to be filed. Copies to be furnished.—All decisions and opinions delivered by said court or any justice thereof in relation to any action or proceeding pending in said court shall be filed and remain in the office of the clerk, and shall not be taken out except by order of the court; but said clerk shall at all times be required to furnish to any person who may desire the same certified copies of such opinions and decisions upon receiving his fees therefor.

No written opinion required when court equally divided.—Fraser v. Willey, 2 Fla., 116.

Ch. 3625, Sec. 1, Feb. 11, 1881.

1762. (1329.) Copies to be furnished Attorney-General. The clerk shall furnish and deliver to the Attorney-General, within a reasonable time after the adjournment of each term of the court, duly certified copies of the headnotes, opinions and statements of cases made by the justices and of briefs of counsel in each case decided at such term, and furnish and deliver to the Attorney-General on his requiring the same duly certified copies of, or extracts from, any other papers or records appertaining to any case decided by the court.

ARTICLE 2.

ITS REPORTS.

1763. (1330.) The Attorney-General to be reporter. The Attorney-General shall report all the decisions of the Supreme Court sanctioned by a majority of the judges thereof. Ch. 2, Secs. 7, 10, Feb. 28, 1845.

1764. (1331.) Number of volumes to be printed and bound.—The number of each volume of reports to be printed and bound shall be fixed by the chief justice.

1765. (1332.) Payment for binding.—The binding of all volumes of such reports shall be paid for by the clerk of the court out of the proceeds of the sales of volumes sold by him. Ch. 1901, Sec. 2, Feb. 27, 1872.

1766. (1333.) Sale of volumes.—

1. Price at Which Clerk Authorized To Sell.—The clerk of said court is authorized to receive from the contractor printing them and to sell volumes of such reports at the following prices: For volumes bound in law sheep, three dollars, and for unbound volumes, two dollars, and to sell unbound volumes reprinted under the provisions of Chapters 3904 and 4903, Laws of Florida, at two and one-half dollars per volume. Ch. 3728, Sec. 1, June 6, 1887.

2. Clerk to Account For Proceeds.—The clerk shall keep an accurate account of the sales made by him and make report to the court at each term thereof the number of volumes sold and the amount received therefor, and of the expenditure thereof for binding.

3. Bond To So Account. — The clerk shall, in addition to the bond prescribed by Section 1751, execute to the Governor a bond in the penalty of two thousand dollars, with sureties to be approved by the Comptroller, and conditioned that he shall faithfully account for all of said volumes of reports and the moneys received for them. Ibid.

1767. (1334.) Disposition of proceeds.—The said clerk, after paying for the binding of such volumes as may be bound shall, under the direction of the Supreme Court, expend the proceeds of the volumes sold by him for rebinding such worn books as may be rebound, for the purchase of such new books as may be required by said justices to be purchased for the library, and for such incidental expenses as may be necessarily incurred in connection with the office of Ib., sec. 4.

librarian of the court, and shall pay the residue thereof into the State treasury on the first day of January, April, July and August of each year.

Ib., sec. 1. as Amended by Ch. 4182, Acts 1893.

1768. (1335.) Distribution of volumes.—The reports of the decisions of the Supreme Court shall be distributed as follows: The contractor shall cause to be delivered the whole number of copies printed for the State to the clerk of the Supreme Court to be kept in his custody for distribution and sale, and said clerk shall deliver or transmit one bound copy thereof to the Governor, and one to each cabinet officer, to each of the justices of the Supreme Court, to each circuit judge, to each county judge, to each judge of county courts, to each solicitor of county courts, to each prosecuting attorney, to each judge of the criminal courts of record, to each State attorney, to each county solicitor of criminal courts of record. A bound copy thereof shall be transmitted by mail or express to the Governor of each State and Territory which sends the reports of its courts to this State. The clerk of the Supreme Court shall cause to be bound a sufficient number of the volumes of the Florida supreme court reports which were reprinted by authority of the act of 1889 (Chapter 3904), and distribute the same as above provided. The Comptroller shall audit the account for such binding, and the Treasurer shall pay the same out of any moneys in the treasury not otherwise appropriated.

Ch. 4743, Acts 1899, and Ch. 4183, Acts 1893.

1769. Distribution to the U. S. district courts.—The clerk of the Supreme Court of this State is hereby required to transmit to the clerk of the United States district court, for the use of the judge of said court, in the Northern and Southern districts of Florida, in each city in the State where sessions of said court are now appointed by law to be held, one bound copy, and to the clerk of the United States circuit court of appeals for the Fifth circuit three bound copies of each volume of the reports of the decisions of the Supreme Court of this State which have heretofore been published, where he has a sufficient number of such volumes on hand to supply them without detriment to the interest of the State; however, before supplying any of the volumes of reports the clerk shall ascertain what volumes are now in the possession of the judges or the clerks aforesaid, and shall supply only such volumes as may be necessary to complete the sets in each of the cities or courts aforesaid, so far as may be practicable; and hereafter, as said reports are published, he shall transmit bound copies of each volume as above directed.

Ch. 4904, Acts 1901, Sec. 1.

1770. Court to re-supply volumes.—It shall be the duty of the clerk of the Supreme Court to re-supply all public offi-

cers to whom under the law the supreme court reports of Florida are distributable with one copy of all such volumes of such reports as he may have on hand, in all cases where the same have never before been supplied to them, or to any predecessors in office, or where the same have been destroyed by fire or otherwise, or irretrievably lost without the fault of the officer: Provided, It be first made to appear to such clerk by the affidavit of the public officer applying for same that the volume or volumes of such reports applied for have never before been supplied to him or to any of his predecessors in office, or have been destroyed, or irretrievably lost without the fault or neglect of such officer, or any of his predecessors: Provided further, That nothing in this act shall be held to require the clerk to reduce his supply of any volume of such reports below the number of fourteen copies, but at least fourteen copies of each and every volume shall be retained by such clerk for the use of the Supreme Court.

1771. Reports to remain the property of the State.— All supreme court reports heretofore furnished to public officers, or that may hereafter be supplied to them, shall continue to remain the public property of the State of Florida, and shall belong to the public office of the officer to whom they are supplied for the official use of their successors in office in perpetuam.

Sec. 2, Ib.; Ch. 4904, Acts 1901.

(See Chapter 5408, Appendix.)

CHAPTER IX.

LIBRARY OF THE SUPREME COURT.

Acquisition of books for. Section.....1772
Custody of. Section.....1773
Report as to condition of. Section.....1774

1772. (1337.) Acquisition of books.—

1. By Purchase.—For proceeds of sales of reports, see Section 1766.

Ch. 1124, Sec. 1, Feb. 13, 1861.

2. By Exchange.—Such numbers of reports, statutes and journals as shall be obtained by the chief justice upon his request, from the Secretary of State, shall be exchanged by the librarian with appropriate authorities of the United States and other states and territories for corresponding numbers of their reports.

Ib.; Ch. 616, Sec. 2, Jan. 11, 1885.

1773. (1338.) Custody of the library.—The library is placed in the custody of the librarian, but under the exclusive control and supervision of the Supreme Court. It shall be kept in a room connected with the supreme court room at the capitol, and in no instance shall the books be taken from the capitol.

Ch. 3053, Sec. 5, Mch. 2, 1877.

1774. (1339.) Report of condition of library. — The librarian shall prepare and file in his office a list of the books in the library under his control on the first day of January and July of each year, and in such list he shall show what books have been lost from the library since his last return, as well as what additional books have been received.

(See Chapter 5409, Appendix.)

CHAPTER X.

COSTS IN THE SUPREME COURT AND EXECUTION THEREFOR.

Certain costs not to be taxed. Section.....1775
Execution for costs. Section.....1776

Ch. 1137, Sec. 5, Feb. 8, 1861.

1775. (1340.) Certain costs not to be taxed.—The costs of copies of the record of any paper on file in the court shall not be taxed as costs against the losing party unless such such copies shall have been ordered by him or his attorney.

Costs in circuit court after entry of appeal, taxable in Supreme Court.—Sanderson v. Sanderson's admr., 20 Fla., 292. Costs of certified copy of opinion on former appeal for use of party, not taxable.—Ib. Duty of clerk as to taxing.—Hyer v. Caro, 18 Fla., 694. Amendment of judgment after term by insertion.—Ib.

Ib., Sec. 6.

1776. (1341.) Execution for costs.—On the rendition of any judgment or decree in said court for costs, the clerk, as soon as may be by the rules of court, shall issue execution in acordance with the terms of said judgment or decree, directed to all and singular the sheriffs of the State of Florida, and returnable in ninety days from the date of the issuance thereof.

TITLE III.

OF PROVISIONS APPLICABLE ONLY TO THE CIRCUIT COURT.

CHAPTER 1.—Its judges. Sections.....1777-1778
2.—Its State attorney. Sections.....1779-1795
3.—Number of circuits and counties composing the same. Sections.....1796-1804
4.—Its terms. Sections.....1805-1820
5.—Its clerk. Sections.....1821-1840
6.—Its sheriff. Sections.....1841-1843
7.—Its official reporter. Sections.....1844-1851
8.—Its seal. Section..... 1852
9.—Its records. Sections.....1853-1858
10.—Its chancery jurisdiction and procedure. Sections....1859-1965
11.—Its special statutory jurisdiction. Sections.....1966-2027
Ejectment. Sections 1966-1977
Establishment of lost records, etc. Sections.....1978-1999
Adoption of children. Sections.....2000-2005
Declaring invalidity of tax assessments. Section.... 2006
Change of names of persons. Section..... 2007
Condemnation proceedings. Sections.....2008-2027
12.—Its court commissioners. Sections.....2028-2033

CHAPTER I.

JUDGES OF THE CIRCUIT COURTS—THEIR STATUTORY POWERS AND DUTIES.

1777. (1342.) To be conservators of the peace. — The judges of the circuit courts respectively shall ex officio be conservators of the peace, and have and exercise, whenever they may deem it fit and proper, all the duties and powers of justices of the peace in criminal cases, except the trial of such cases; and shall have power and authority, if they see fit, to admit prisoners to bail where it may have been refused by any justice of the peace. Nov. 19, 1828, Sec. 4.

1778 (1343.) To call over docket at end of term. — It shall be the duty of the judge, at each term of the court, after other business of the term shall have been disposed of, to call over all the causes standing upon the dockets, and to make such orders and entries therein as shall be found necessary in relation thereto. Nov. 23, 1828, Sec. 19.

(Salary: See Chapter 5395, Appendix.)

CHAPTER II.

THE STATE ATTORNEY—HIS POWERS, DUTIES AND RESPONSIBILITIES.

ARTICLE 1.—Prosecution of suits and attendance upon courts. Sections 1779-1781
2.—Collection of and accounting for moneys. Sections....1782-1784
3.—Making reports. Section..... 1785
4.—Compromising with debtors to State. Sections.....1786-1787
5.—Surrender of papers to his successor. Section..... 1788
6.—His assistants. Sections.....1789-1791
7.—His compensation. Sections.....1792-1795

ARTICLE 1.

PROSECUTION OF SUITS AND ATTENDANCE UPON COURTS.

Ch. 1661, Sec. 8, Aug. 6, 1868.

1779. (1344.) Before the court itself.—It shall be his duty to appear in the circuit court within his judicial circuit, and prosecute or defend on behalf of the State all suits, applications or motions, civil or criminal, in which the State is a party.

Ib., Sec. 4.

1780. (1345.) Before the grand jury. — Whenever required by the grand jury, it shall be his duty to attend them for the purpose of examining witnesses in their presence, or of giving legal advice in any matter before them; and he shall prepare bills of indictment.

Ch. 2094, Sec. 2, Mch. 2, 1877.

1781. (1346.) Summoning witnesses for State.—It shall be his duty to have summoned all witnesses required on behalf of the State.

(See Chapter 5399, Appendix.)

ARTICLE 2.

COLLECTION OF AND ACCOUNTING FOR MONEYS.

Ch. 1413, Sec. 1, Dec. 3, 1868.

1782. (1347.) To be charged with claims.—The Comptroller of the State shall charge the several State attorneys with all claims whatever which he may place in their hands for collection of money for and on behalf of the State, or which he may otherwise require them to collect.

1783. (1348.) How discharged.—Said charges shall be evidence of indebtedness on the part of any State attorney against whom any charge is made for the full amount of such claim to the State until the same shall be collected and paid into the treasury or sued to insolvency, which fact of insolvency shall be certified by the circuit judge of his circuit, unless said State attorney shall make it fully appear to the Comptroller that the failure to collect the same did not result from his neglect. Ib., Sec. 2.

1784. (1349.) Report upon claims committed to him. He shall make a report to the Comptroller on the first Monday in January and July in each and every year of the condition of all claims placed in his hands or which he may have been required to prosecute and collect, whether the same is in suit or in judgment, or collected, and the probable solvency or insolvency of claims not collected, and shall at the same time pay over all moneys which he may have collected belonging to the State; and the Comptroller shall not audit or allow any claim which any State attorney may have against the State for services until he makes the report herein required. Ib., Sec. 3.

ARTICLE 3.

REPORTS OF CASES.

1785. (1350.) Duty to make report of cases, etc.—He shall, within thirty days after the final adjournment of the circuit court, at each term thereof, forward to the Comptroller of public accounts a full and complete statement and report of all the cases in which the State is a party, or is otherwise interested; which report shall contain the title of the cases, date when commenced, offense charged, or if civil, cause of action sued on, and the steps taken in or disposition made of, each case at the term; in cases of conviction, punishment imposed; in civil cases, the amount and date of judgment, if any, and such other matters as may be necessary and material for the public information as to the progress of the State cases. Ch. 220, Acts 1848, Sec. 1.

ARTICLE 4.

COMPROMISING WITH DEBTOR TO STATE.

Ch. 3236, Sec. 1, Feb. 28, 1881.

1786. (1351.) Power to compromise.—He is authorized, with the approval of the Comptroller, to compromise and settle all judgments, claims and demands in favor of the State in his circuit against defaulting collectors of revenue, sheriffs and other officers, and the sureties on their bonds, on such terms as he may deem equitable and proper.

And any such compromise or settlement may be made with any of the sureties of such defaulting officer as to his individual liability, and a receipt to such surety shall be a discharge of his obligation; but the discharge of one or more of the sureties so compromised and settled with shall not operate as a discharge of the principal or other sureties from the judgment, claim or demand in favor of the State.

Ib., Sec. 2.

1787. (1352.) Completion of compromise.—He shall, on agreeing to any compromise or settlement, report the same to the Comptroller of the State for his approval; and, on his approving such compromise or settlement, it shall be the duty of the said State attorney, on a compliance with the terms of such compromise or settlement to give a receipt to the collector of revenue, sheriff or other officer, or the sureties on their bonds, or to their legal representatives, which receipt shall be a discharge from all judgments, claims or demands of the State against such collector of revenue or other officer, or the sureties on their bonds.

ARTICLE 5.

SURRENDER OF PAPERS, ETC., TO HIS SUCCESSOR.

Ch. 1413, Sec. 4, Dec. 3, 1863.

1788. (1353.) Duty prescribed.—Upon the qualification of the successor of any State attorney, the State attorney going out of office shall deliver to his successor a statement of all cases for the collection of money in favor of the State under his control and the papers connected with the same, and take his receipt for the same, which receipt, when filed with the Comptroller, shall release such State attorney from any further liability to the State upon the claims receipted for; and the State attorney receiving the claims shall be

liable in all respects for the same, as provided against State attorneys in Section 1782.

ARTICLE 6.

ACTING STATE ATTORNEY AND ASSISTANT.

1789. (1354.) Acting State attorney.—Whenever there shall be a vacancy in the office of State attorney in any of the judicial circuits of this State, either by non-appointment or otherwise, or if a State attorney shall not be present at any regular or special term of the court, or being present, shall from any cause be unable to perform the duties of his office, the judge of said circuit court shall have full power to appoint a prosecuting attorney from among the members of the bar, with the consent of the member so appointed, to whom shall be administered an oath to faithfully discharge the duties of State attorney, and who shall have as full and complete authority, and whose acts shall be in all respects as valid as a regularly appointed State attorney. He shall sign all indictments and other documents as "acting State attorney." The power of the said appointee shall cease upon the arrival of the State attorney or the cessation of his inability.

Ch. 1726, Sec. 1, June 22, 1869. Ch. 1996, Sec. 2, Feb. 12, 1874, as revised by Sec. 1, Ch. 4899, Acts 1901.

1790. Pay.—The said acting State attorney shall receive for his services the sum of ten dollars per day while in attendance upon the court, which shall be paid out of the appropriation for the payment of State attorneys, and deducted from the salary of the State attorney for whom he acted.

Sec. 2, Ib.

1791. (1355.) Assistant to State attorney.—The State attorney, by and with the consent of court, may procure the assistance of any member of the bar when the amount of the State business renders it necessary, either in the grand jury room to advise them upon legal points and framing indictments, or in court to prosecute criminals. But such assistant shall not be authorized to sign any indictments or administer any oaths, or to perform any other duty except the giving of legal advice, drawing up of indictments, and the prosecuting of criminals in open court. His compensation shall be paid by the State attorney and not by the State.

Ch. 2099, Sec. 1, Feb. 27, 1877.

ARTICLE 7.

HIS COMPENSATION.

Sec. 1, Ch. 4353, Acts 1895. Amending Ch. 3000, Sec. 1, Feb. 27, 1877.

1792. (1356. (1.)) Salary.—He shall receive eighteen hundred dollars per annum, to be audited by the Comptroller and paid by the Treasurer, quarterly.

(See Chapter 5399, Appendix.)

Sec. 2, Ib.

1793. (1356. (2.)) Fees for conviction.—He shall receive for a conviction of murder in the first degree, thirty dollars ($30.00); ten dollars ($10.00) for each conviction in other cases of felony, and five dollars ($5.00) for each conviction in cases of misdemeanor; such fees to be taxed as costs against the person convicted, and to be paid to him by the several sheriffs of the respective counties of such circuit, and said fees shall be paid over by the State attorney to the county treasurer of the respective counties to be placed to the fine and forfeiture fund.

Ch. 3236, Sec. 3, Feb. 28, 1881.

1794. (1356. (3.)) Percentage and actual expenses, upon collections.—He shall receive from the State his actual expenses incurred in the prosecution of all charges against collectors of revenue, sheriffs or other officers, or the sureties on their bonds, and a commission of 10 per cent. on all moneys collected by him or paid into the treasury on account of any claim prosecuted or compromised by him; the amount of his expenses and his commissions to be paid by the Treasurer of the State on the warrant of the Comptroller, who shall issue his warrant for the same on the presentation of accounts duly sworn to, such payments to be made out of the funds received from the claim or claims prosecuted, and to be charged as an expense incurred in the prosecution of such claim or claims; and in case there be no collection, the actual expenses to be paid out of any money in the treasury not otherwise appropriated.

1795. (1257.) Deduction from compensation.—

Ch. 1996, Sec. 1, Feb. 12, 1874.

1. When Required.—Each State attorney shall attend all the courts in the judicial circuit to which he has been appointed, and upon his failure to do so, except in case of sickness, he shall forfeit to the State ten dollars ($10.00) per day for every day of such failure, and the Comptroller of the State shall deduct the amount of such forfeitures from the compensation of such State attorney, upon the certificate of the circuit judge to the number of days of such failure. The State attorney shall not, however, be required to remain in

attendance at any term of court after the criminal business shall have been disposed of.

2. When Not Permitted.—The Comptroller shall not make any deduction from any compensation earned by a State attorney because of any charge against him for any claims placed in his hands, unless he shall have failed to account for and pay over the same as provided in Sections 1782 to 1784.

Ch. 1413, Sec 4, Dec. 3, 1866.

CHAPTER III.

NUMBER OF CIRCUITS AND COUNTIES COMPOSING SAME, ETC.

1796. Eight judicial circuits.—There shall be eight judicial circuits in and for the State of Florida, and there shall be eight circuit judges and eight State attorneys, who shall be appointed by the Governor and confirmed by the Senate and who shall hold their office for the term provided by the Constitution: Provided, That the seven circuit judges and State attorneys holding office at the time of this division shall continue to exercise jurisdiction over their existing circuits as constituted at the time of this division, until the judge and State attorney of the additional circuit shall have been qualified. The circuit judges and State attorneys holding office at the time of this division shall severally continue in office until the expiration of their existing term of office as judges and State attorneys of the circuits respectively in which under this division the county of their residence may be included; and a judge and a State attorney for the additional circuit shall be appointed for a term equal to the unexpired term of the other circuit judges upon this division being made, when the circuit court of this additional circuit shall have jurisdiction over all circuit court cases then pending in the various counties composing the additional circuit; and no civil or criminal case, pleading or indictment shall abate, be quashed, dismissed or defeated in any of the circuits by reason of this change in circuits or division of the State into eight judicial circuits; but all cases now pending in any of the circuits as herein established, may be maintained and prosecuted in the circuit court in such circuit where same are pending.

Sec. 1, Ch. 5120, Acts 1903.

1797. Judicial circuits—how composed.—The first judicial circuit of the counties of Santa Rosa, Escambia, Walton, Holmes, Washington and Jackson.

Sec. 2, Ib.

Sec. 1360. Sec. 3, Ib.

1798. The second judicial circuit, of the counties of Liberty, Calhoun, Franklin, Gadsden, Jefferson, Wakulla and Leon.

Sec. 4, Ib.

1799. The third judicial circuit, of the counties of Madison, Taylor, Lafayette, Hamilton, Suwannee and Columbia.

Sec. 5, Ib.

1800. The fourth judicial circuit, of the counties of Nassau, Duval, Clay and St. Johns.

Sec. 6, Ib.

1801. The fifth judicial circuit, of the counties of Marion, Citrus, Hernando, Sumter and Lake.

Sec. 7, Ib.

1802. The sixth judicial circuit, of the counties of De-Soto, Polk, Manatee, Pasco, Hillsborough, Lee and Monroe.

Sec. 8, Ib.

1803. The seventh judicial circuit, of the counties of Volusia, Brevard, Orange, Dade and Osceola.

Sec. 9, Ib.

1804. The eighth judicial circuit, of the counties of Alachua, Bradford, Levy, Putnam and Baker.

CHAPTER IV.

TERMS OF THE CIRCUIT COURT.

ARTICLE 1.—Its regular terms. Sections.....1805-1812
2.—Its special terms. Section..... 1813
3.—Exchange of and assignment of judges. Sections.....1814-1816
4.—Attendance of judges. Sections.....1817-1820

ARTICLE 1.

ITS REGULAR TERMS.

The regular terms of the several circuit courts shall be held at the county seats of the respective counties at the following times:

1805. First judicial circuit.—

Sec. 1, Ch. 5121, Acts 1902.

Spring Terms.—Santa Rosa, last Monday in March.
Escambia, second Monday in April.
Walton, first Monday after the fourth Monday in April.
Holmes, third Monday after the fourth Monday in April.
Washington, fifth Monday after the fourth Monday in April.
Jackson, seventh Monday after the fourth Monday in April.

Fall Terms.—Santa Rosa, third Monday in September.
Walton, first Monday in October.
Holmes, second Monday after the first Monday in October.
Washington, fourth Monday after the first Monday in October.
Jackson, sixth Monday after the first Monday in October.
Escambia, first Monday in December.

1806. Second judicial circuit.—

Spring Terms.—Liberty, third Monday in March. Sec. 1367.
Calhoun, fourth Monday in March. Sec. 2, Ib.
Franklin, first Monday after the fourth Monday in March.
Gadsden, second Monday after the fourth Monday in March.
Jefferson, fourth Monday after the fourth Monday in March.
Wakulla, sixth Monday after the fourth Monday in March.
Leon, seventh Monday after the fourth Monday in March.

Fall Terms.—Liberty, first Monday in October.
Calhoun, second Monday in October.
Franklin, third Monday in October.
Gadsden, fourth Monday in October.
Wakulla, second Monday after the fourth Monday in October.
Jefferson, third Monday after the fourth Monday in October.
Leon, fifth Monday after the fourth Monday in October.

1807. Third judicial circuit.—

Spring Terms.—Hamilton, fourth Monday in January.
Taylor, Tuesday after the first Monday in April. Sec. 3, Ib.
Madison, second Monday in April.
Columbia, fourth Monday in April.
Suwannee, second Monday in May.
LaFayette, Tuesday after the fourth Monday in May.

Fall Terms.—Hamilton, fourth Monday in August.
Taylor, Tuesday after first Monday in October.
Madison, second Monday in October.
Columbia, fourth Monday in October.
Suwannee, second Monday in November.
LaFayette, first Tuesday after fourth Monday in November.

1808. Fourth judicial circuit.—

Sec. 4, Ib.

Spring Terms.—Clay, first Tuesday after second Monday in April.
Nassau, third Monday in April.
St. Johns, fourth Monday in April.
Duval, first Tuesday after the first Monday in May.

Fall Terms.—Clay, first Tuesday after the fourth Monday in October.
Nassau, first Monday in November.
St. Johns, second Monday in November.
Duval, third Monday in November.

1809. Fifth judicial circuit.—

Sec. 5, Ib.

Spring Terms.—Lake, first Tuesday in March.
Sumter, third Tuesday in March.
Citrus, first Tuesday in April.
Hernando, third Tuesday in April.
Marion, first Tuesday in May.

Fall Terms.—Lake, first Tuesday in October.
Sumter, third Tuesday in October.
Citrus, first Tuesday in November.
Hernando, third Tuesday in November.
Marion, first Tuesday in December.

1810. Sixth judicial circuit.—

(See Chapter 5396, Appendix.)

Sec. 6, Ib.

Spring Terms.—Lee, first Tuesday in March.
DeSoto, second Tuesday in March.
Polk, fourth Tuesday in March.
Manatee, first Tuesday in April.
Pasco, second Tuesday in April.
Monroe, first Wednesday after the fourth Tuesday in April.
Hillsborough, second Tuesday in May.

Fall Terms.—Pasco, first Tuesday in October
Polk, second Tuesday in October.
DeSoto, fourth Tuesday in October.
Lee, second Tuesday in November.
Manatee, third Tuesday in November.
Monroe, first Wednesday after the fourth Tuesday in November.
Hillsborough, second Tuesday in December.

1811. Seventh judicial circuit.—

Spring Terms.—Dade, first Monday in March. Sec. 7, Ib.
Brevard, fourth Monday in March.
Volusia, second Monday in April.
Orange, fourth Monday in April.
Osceola, second Monday after the fourth Monday in April.

Fall Terms.—Dade, first Monday in October.
Brevard, fourth Monday in October.
Volusia, second Monday after the fourth Monday in October.
Orange, fourth Monday after the fourth Monday in October.
Osceola, sixth Monday after the fourth Monday in October.

1812. Eighth judicial circuit.—

(See Chapter 5397, Appendix.)

Spring Terms.—Levy, first Tuesday after the first Monday in February. Sec. 8, Ib.
Alachua, first Tuesday after the third Monday in February.
Bradford, third Monday in March.
Baker, first Monday in April.
Putnam, first Tuesday after the second Monday in April.

Fall Terms.—Levy, first Tuesday after the third Monday in September.
Alachua, first Tuesday after the first Monday in October.
Bradford, first Monday in November.
Baker, third Monday in November.
Putnam, first Tuesday after the fourth Monday in November.

ARTICLE 2.

ITS SPECIAL TERMS.

1813. (1373.) Judges authorized to order.—The judges of the circuit courts are authorized to order and hold extra and special terms of said courts whenever in their judgment the public welfare and the cause of justice require the same; and the order for such special terms may be made either in term time or vacation. Chap. 1561, Sec. 1, Dec. 13, 1866.

Judge may fix time to which special term shall adjourn.—Bass v. State, 17 Fla., 685; Jernigan v. State, ib., 690.

ARTICLE 3.

EXCHANGE OF CIRCUITS, AND ASSIGNMENT OF JUDGES.

Ch. 1444, Sec. 2, Dec. 6, 1864.

1814. (1374.) Governor authorized to order. — Whenever it shall appear to the Governor of this State that any judge of a circuit court is absent from his circuit and cannot hold the courts of the same, or is disqualified in any cause pending in said court, or for any cause cannot properly hear, try and determine the same, the Governor may require an exchange of circuits or of courts in any of the counties of the circuit between such judge and any other judge of a circuit court, or may appoint and assign any other of the judges of the circuit court to hold regular or special terms of the court in such circuit at such time or times as the Governor may direct.

Ib., Sec. 3.

1815. (1375.) Penalty for failure of judge to obey orders. The failure of any judge to perform the duty required of him by the Governor under the preceding section shall be cause of impeachment of such judge.

Ib., Sec. 4.

1816. (1376.) Compensation for extra expense.—The judges of the circuit court shall receive an increased compensation sufficient to reimburse them for the increased expense to which they may be subjected in performing the duties required by the Governor, to be paid on the warrant of the Comptroller to be issued upon the certificate of the Governor.

The judge assigned becomes pro hac vice the judge of the circuit and power of resident judge is suspended.—Clark v. Rugg, 20 Fla., 861.

ARTICLE 4.

ATTENDANCE OF JUDGES UPON TERMS.

Ch. 252, Sec. 1, Jan. 9, 1849.

1817. (1377.) Judge to attend on first day of term. Each judge of a circuit court is required, unless prevented by sickness or other providential causes, to attend on the first day of each term of the circuit court required by law to be holden, and upon failure to do so, shall be subject to a deduction of one hundred dollars from his salary for each and every such default.

1818. (1378.) To state reason for non-attendance. Whenever any judge as aforesaid shall make default as aforesaid in consequence of sickness or providential interposition, it shall be the duty of such judge to state the reasons of such failure, in writing, over his official signature, to be handed to the clerk of the court, who shall enter the same at length on the records of the court. Ib., Sec. 2.

1819. (1379.) Enforcement of penalty for non-attendance.—Whenever such default shall occur, it shall be the duty of the clerk of the court (unless such judge shall file his reasons for such default as hereinbefore provided) to certify the fact, under his official signature and seal, to the Comptroller of the State, whose duty it shall be to deduct from the warrants on the Treasurer, thereafter to be issued in favor of the judge making such default, the sum of one hundred dollars as aforesaid for every such default. Ib., Sec. 3.

1820. (1380.) Adjournment of court upon non-attendance.—Whenever any judge shall not attend on the first day of any term, the court shall stand adjourned until twelve o'clock on the second day; and if said judge shall not then attend, it shall be the duty of the clerk at that time to continue all causes, and adjourn the court to such time as the judge may appoint, or to the next regular term, by law established. Nov. 23, 1828, Sec. 3.

CHAPTER V.

ITS CLERK.

ARTICLE 1.—Bond to be given by him. Sections.....1821-1824
2.—Power to appoint deputies. Section..... 1825
3.—Place of office and residence. Sections.....1826-1827
4.—His duties. Sections.....1828-1837
As clerk of court. Sections.....1828-1831
As recorder of deeds, etc. Sections.....1832-1835
As clerk of board of county commissioners. Section 1836
5.—Vacancy in office of. Section..... 1838
6.—His compensation. Sections.....1839-1840

ARTICLE 1.

PROVISIONS RELATING TO BOND.

1821. (1381.) Bond to be given.—The clerk of the circuit court shall, before he is commissioned, give bond in a penalty Ch. 3724, Secs. 1, 3, June 2, 1887.

which shall not be less than one thousand dollars nor more than five thousand dollars, to be fixed by the board of county commissioners of his county, to the Governor of the State of Florida and his successors in office, with two or more good and sufficient sureties, to be approved by the board of county commissioners and the Comptroller, and to be filed with the Secretary of State; which bond shall be conditioned for the faithful discharge of the duties of his office.

Ib., Sec. 9.

1822. 1382.) Obligation of sureties.—Each surety upon such bond may bind himself for a specified sum, and the aggregate amount for which the sureties shall bind themselves shall not be less than the penalty of the bond.

Ib., Sec. 10.

1823. (1383.) Justification of sureties.—Each surety upon such bond shall make affidavit that he is a resident of the county for which the clerk is to be commissioned, and that he has sufficient visible property therein unincumbered and not exempt from sale under legal process to make good his bond.

1824. Surety companies.—The provisions of the foregoing sections as to number of sureties, affidavits of residence and justification of same, shall not apply to surety companies, who can lawfully execute official bonds in this State.

ARTICLE 2.

DEPUTY CLERKS.

Feb. 12, 1834, Sec. 1; Ch. 254, Sec. 1, Jan. 18, 1849.

1825. (1384.) Power of clerk to appoint deputies.—The said clerk may appoint a deputy or deputies, for whose acts he shall be liable, and the said deputies shall have and exercise the same powers as the clerks themselves.

Deputy may draw grand jurors from box.—Willingham v. State, 21 Fla., 761. Powers of deputy.—McKinnon v. McCollum, 6 Fla., 376.

ARTICLE 3.

PLACE OF OFFICE AND RESIDENCE.

Feb. 12, 1834, Sec. 3.

1826. (1385.) Place of office.—He shall keep his office at the county seat of the county.

1827. (1386.) Place of residence.—He or a deputy shall reside at the county seat or within two miles thereof. Ch. 1851, Sec. 1; Jan. 26, 1871.

ARTICLE 4.

HIS DUTIES AS CLERK OF CIRCUIT COURT.

1828. (1387.) To make reports to the Comptroller.—He shall, within twenty days after the end of each term of the circuit court, forward to the Comptroller a full abstract of all fines, fees, costs, forfeitures or other monies adjudged to or rendered in favor of the State of Florida at such term, stating in such report the name of the person against whom the same is adjudged, and in what capacity, on what account, the amount so adjudged, the process or order of court issued to enforce payment, and the name of the officer into whose hands the process is placed, and such remarks as may be necessary to inform the Comptroller of the exact amount to be collected and paid over to the State Treasurer. Ch. 217, Acts 1849, Sec. 1.

1829. (1388.) To issue process on State judgments.—He shall, immediately after the rendition of any such judgment as aforesaid, issue and place in the hands of the sheriff a capias, or other proper process, for the collection of the amount so adjudged or rendered. Ib., Secs. 2, 3.

If he shall fail to perform the duties imposed upon him as above, he shall be subject to a fine of twenty dollars ($20.00,) to be recovered upon motion before the circuit court in the county where he shall reside, after ten days' notice of such motion.

TO KEEP PAPERS AND RECORDS.

1830. (1389.) To keep papers.—He shall keep all papers [illegible]d in his office with the utmost care and security, arranged in appropriate files (endorsing upon each the time when the same was filed), and all the pleadings in such cause shall be attached together with tape or ribbon, and kept distinct from other papers in the cause; and papers of different kinds shall not be mixed up and folded loosely together, but each description of papers shall be kept on file with other papers of the same class; and he shall not permit any attorney, or other person, to take papers once filed out of the office of the clerk without leave of the court, except as is hereinafter provided by law. Nov. 18, 1828, Sec. 59.

Ib., Sec. 9.

1831. (1390.) To keep records and dockets.—He shall keep:

Minute Books, in which he shall keep regular and fair minutes of all the proceedings of the circuit court, and of the judge, in term or vacation, which shall be signed by the judge before the adjournment of each term.

Judge must sign minutes.—McClerkin v. State, 20 Fla., 879. Judge may keep minutes, swear witnesses, etc.—Ib.

A Progress Docket, in which he shall note the filing by each party to any cause, at common law or in equity, of any appearance or pleading therein, and of any step taken in the clerk's office in connection with said cause, such noting to be at the time of such filing and of taking such step.

A Default Docket, in which shall be entered in full all defaults and final judgments by default taken in his office.

A Judgment and Execution Docket, in which, respectively, he shall index all judgments rendered, in term time or vacations, and all executions issued thereon, stating therein the names of the parties, the amount of judgment and costs and the date of rendition of the same, the page of the record upon which it shall have been entered, and the date of the issuance of execution.

A Chancery Order Book, in which shall be entered all orders taken in chancery, except those required to be signed by the judge exclusively, which shall be entered upon the minutes.

(See Chapter 5394, Appendix.)

Ib., Secs. 59, 60.

A Trial Docket, which shall be kept in court during all terms thereof while in session, upon which shall be entered, before each term of court:

All cases of law tryable at that term.

All cases of claims to property and alleged illegality of seizures under execution.

All cases in equity pending.

All writs of error, appeals and certioraris from lower courts pending.

All criminal cases.

One copy of such trial docket shall be made up for the court and one for the members of the bar.

A Subpoena Docket, in which he shall enter the name of each witness in each cause subpoenaed, with the date of the issuance of the subpoena.

A Motion Docket, upon which shall be entered by attorneys all motions to be submitted to the court. Ib., Sec. 61.

A Judgment Assignment and Satisfaction Record, in which shall be entered at length all assignments and satisfactions of judgments, decrees or orders rendered or of record in said court. No assignment or satisfaction shall be entered elsewhere than in said book, and any assignment or satisfaction shall, to entitle it to record, be in writing and duly acknowledged in the manner provided for the acknowledgment of deeds. He shall enter a note of the satisfaction on the margin of the record of the judgment, decree or order. No satisfaction by any alleged assignee of a judgment shall be entered until an assignment as hereinbefore provided shall have been produced to the clerk and entered.

A Record of Foreign Judgments, in which he shall enter all transcripts of judgments in other counties of the State, and of judgments of county courts, county judges and justice of the peace courts, and judgments and decrees of United States courts held in this State. Nov. 12, 1834, Sec. 2; Amended by Ch. 4399, Acts 1895.

A Lis Pendens Docket, in which shall be recorded all notices of lis pendens.

Indexes, alphabetical, direct and inverse, to all of the foregoing books.

HIS DUTIES AS RECORDER OF DEEDS, ETC.

1832. (1391.) Record books to be kept.—He shall be, in the county in which he is clerk, the recorder of deeds, and of all other papers not pertaining to the circuit court which he may be required by law to record.

For the purpose of such recording, he shall keep:

A Record of Deeds, in which he shall record all deeds, and all leases of land, and all powers of attorney to execute any of such instruments, and all agreements relating to the conveyance of land which may be in form entitled to record.

A Record of Mortgages, in which he shall record all mortgages on real or personal property and powers of attorney embracing a power to execute mortgages which may be in form entitled to record.

A Record of Liens, in which he shall record all statutory liens required or permitted to be recorded.

A Mortgage and Lien Assignment Book, in which shall be recorded all assignments of mortgages or statutory liens

presented to him for record. No assignment shall be entered elsewhere than in such book, and any assignment shall, to entitle it to record, be in writing and duly acknowledged in the manner provided for the acknowledgment of deeds. He shall enter a note of assignment upon the margin of the record of the mortgage or lien.

A Mortgage Lien and Satisfaction Book, in which shall be recorded satisfaction of mortgages and liens. No such satisfaction shall be entered elsewhere than in such book, and any satisfaction, to entitle it to record, shall be in writing and duly acknowledged in the manner provided for the acknowledgment of deeds. No satisfaction by an alleged assignee of a mortgage or lien debt shall be entered until an assignment as hereinbefore provided shall have been presented to the clerk and entered. He shall enter a note of satisfaction on the margin of the record of the mortgage or lien.

Also An Incorporation Book, in which he shall record all articles of incorporation required by law to be recorded.

Indexes, alphabetical, direct and inverse, to all the foregoing books.

Sec. 1, Ch. 4140, Acts 1893.

1833. Two sets of indexes in certain cases.—To keep two sets of books of index: Provided, Said books are furnished by the board of county commissioners, in and for said county; one of which sets shall refer to lands which have been platted; the other to lands which have not been platted. In the direct index the books shall embrace, at least, the following features, and should be so ruled: Grantor, grantee, consideration, instrument, date of filing, where recorded, volume, page, brief abstract of description. Upon the requisition of said clerk, the board of county commissioners, if they deem it advisable, shall furnish the necessary books. Whenever deemed advisable, the board of county commissioners shall have the books indexed to date as is indicated herein, or in a manner similar thereto. In the direct index, the names of the grantors shall be arranged alphabetically. In the inverse index, the names of the grantees shall be indexed alphabetically and made to contain only the names of the grantees and grantors.

Sec. 1, Ch. 4139, Acts 1893.

1834. Verification.—It shall be the duty of clerks of the circuit court, judges of probate and all other officers charged with the duty of recording deeds and other instruments of writing in this State, to carefully compare the originals of such deeds, mortgages and other instruments of writing with the record of same as made by them on the record books

under their charge, in order that any errors committed in such record may be corrected; and after such comparison and correction of the record the said officer shall endorse upon such original document the words, "Record verified," and sign his name thereto.

1835. Fees.—The fees for recording any instrument of writing entitled to record under the laws of this State shall not be payable to any officer who may have recorded the same until he has verified the record and endorsed the original instrument as aforesaid. Sec. 2, Ib.

Such records shall always be open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making extracts therefrom; but the clerk shall not be required to perform any service in connection with such inspection or making of extracts without payment of the compensation fixed by law.

1836. (1392.) Clerk of the board of county commissioners.—He shall be clerk of the board of county commissioners.

1837.—Certain tax certificates cancelled.—Whenever any soldier or sailor, or the widow of any such soldier or sailor, who was in the service of the State or Confederate States during the war between the States, and was honorably discharged therefrom, shall make oath before the clerk of the circuit court of this State that his home has been sold for non-payment of taxes, and that he is unable, by reason of poverty, to redeem the same, the said clerk shall cancel the certificate of such sale, and mark thereon the reason of such cancellation; but said clerk shall require proof other than the oath of the party of such service and inability to redeem. Sec. 1, Ch. 5111, Acts 1903.

ARTICLE 5.

VACANCY IN OFFICE OF CLERK.

1838. (1393.) Clerk ad interim.—In the case of vacancy occurring in the office of a clerk of the circuit court by death, resignation or other cause, it shall be the duty of the judge of that court to appoint a clerk ad interim, who shall assume all the responsibilities, perform all the duties and receive the same compensation for the time being as if he had been duly appointed to fill the office; and he shall give such bond and security for the faithful performance of his duties as is prescribed by law. Ch. 722, Sec. 1, Dec. 14, 1855.

ARTICLE 6.

HIS COMPENSATION.

1839. (1394.) As clerk and recorder.—His compensation as clerk and recorder shall be entirely by fees, and shall be as follows:

Ch. 3106, Sec. 1, Mch. 7, 1879.

Arraignment of prisoner	$0 10
Appearance of defendant, entering	08
Attachment, issuing	50
Attachment for witnesses	40
Bond, approving	50
Capias, issuing	40
Certiorari, issuing	75
Commission to take testimony, issuing	50
Commissioners, instructions to, issuing	40
Copying any record of paper, first 100 words	20
Each additional 100 words, and fraction thereof	10
Costs, taxing	15
Deed, taking acknowledgment of	50
Docketing cases in bench and bar dockets at each term, each	08
Dower, taking relinquishment of	50
Entering other matters required, in the records of courts (except as herein otherwise provided) for the first 100 words or less	20
For additional 100 words or less	10
Fieri facias, issuing	75
Filing any paper required to be filed	05
Fines and forfeitures, reports of to Comptroller	40
Garnishment, issuing	50
Grand jury, calling and swearing	50
Recording of	15
Habere facias possessionem, issuing	75
Interest, calculating and assessing damages	25
Injunction, issuing	1 00
Jurors, report of to Comptroller	40
Jurors, certificates to each	05
Jury, petit, calling, swearing and recording	30
Moneys, receiving into registry, and paying out first $500, per cent	01
Each subsequent $100, per cent	1-2
Oath, and administering	06
Progress docket, entry in	08
Recording any paper, first 100 words or less	25
Each additional 100 words or fraction thereof	10

Scire facias, issuing	75
Seal, affixing to any paper other than those herein specially mentioned	10
Searches of one year's standing or less	10
Of more than one year's standing	15
Subpoena in chancery, issuing	75
Subpoena for witness, issuing	20
Docketing	08
Summons ad res., issuing	40
Venire facias, issuing	50
Verdict of jury, recording	10
Witnesses, certificate to each	05
Writing any paper other than herein specifically mentioned, same as for copying, indexing each entry	05

1840. (1395.) As clerk board of county commissioners. His compensation as clerk of the board of county commissioners shall be fixed by the board of county commissioners, and upon a basis proportionate to the compensation allowed by law for other services.

Ch. 1882, Sec. 1, Feb. 16, 1872; As amended by Ch. 4909, Acts 1901.

CHAPTER VI.

ITS SHERIFF.

To be executive officer of county. Section....1841
Compensation for execution of prisoner. Section....1842
To purchase articles for the court. Section....1843

1841. (1396.) To be executive officer of county.—The sheriff of the county shall be the executive officer of the circuit court of the county.

Ch. 4, Sec. 14, July 22, 1845.

1842. (1397.) Compensation.—For the services in and about the execution of the death sentence upon any prisoner, he shall receive compensation as follows: Gallows, erection of, not exceeding actual cost, $15.00; prisoner, hanging of, $10.00.

Ch. 3106, Sec. 2, Mch. 7, 1879.

1843. (1398.) To purchase necessary articles for the court.—The judge of the circuit court, at each term thereof, shall make a written requisition upon the sheriff attending upon said court for such stationery or other articles as he may deem necessary for the use of the court, and the sheriff

Ch. 219, Sec. 8, Jan. 5, 1849.

shall procure the same, and in no other way shall the sheriff or other officer of the court be authorized to purchase articles at the expense of the State; the said requisition shall be a sufficient voucher to sustain the claim of any person furnishing articles as aforesaid against the State.

(Compensation: See Section 1683.)

CHAPTER VII.

ITS OFFICIAL REPORTER—HIS DUTIES AND COMPENSATION.

Sec. 1, Ch. 3122, Acts 1903.

1844. Official reporter, qualifications and appointment. There shall be in each judicial circuit of this State a reporter of testimony and proceedings in trials at law in the circuit court. He shall be an expert stenographer and typewriter, and shall be appointed by the Governor, upon the recommendation of the circuit judge, and hold during the pleasure of the Governor.

Sec. 2, Ib.

1845. His duties.—He shall, upon the discretion of the said judge, report the testimony and proceedings in the trial of any criminal case in the circuit court, and shall report the testimony and proceedings in the trial of any civil case in said court upon the demand, in writing, filed in the cause, of the attorney for either party. He shall not, however, be required to attend at any trial out of the county in which he may reside, upon the demand of any attorney, unless such attorney shall deposit or secure his mileage and at least one day's per diem as hereinafter fixed.

Sec. 3, Ib.

1846. Compensation.—He shall be entitled to receive for each day or fraction of a day in which he shall be engaged in the county in which he resides, in reporting such testimony and proceedings, a per diem of five dollars, and for each day or fraction of a day in which he shall be engaged in any county other than that in which he resides, in reporting such testimony and proceedings or in waiting upon the order of the judge or demand of an attorney to the cause, the beginning of the trial, a per diem of six dollars, and mileage at the rate of five cents each way, going and returning from his residence; and for each typewritten transcript of his notes of such testimony and proceedings taken on such trial and furnished on demand as hereinafter provided, the sum of twelve and one-half cents per folio of 100 words, and for each carbon copy thereof, six cents per folio.

1847. (1399.) How paid in criminal cases.—His account for his per diem and mileage for attendance in criminal cases shall be certified to by the judge, and paid as other criminal costs are paid in the county in which the trial is had; his account for attendance and mileage in civil cases shall be taxed as costs in the cause. Upon the demand of the State attorney, or the defendant in any criminal case, or upon demand of either party in any civil case, he shall, upon payment of his fees therefor, as hereinbefore fixed, furnish with reasonable diligence a typewritten transcript of such testimony and proceedings, and his fees therefor shall be taxed as costs in the cause. Sec. 4, Ib.

1848. His transcript prima facie evidence.—The report of such official stenographer, when written out in long-hand writing or printed in type and certified to by him as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings: Provided, That his signature to such certificate be duly acknowledged by him before a notary public or some judicial official of this State. Sec. 5, Ib.

1849. Females eligible.—Females filling the requirements of Section 1844 shall be eligible to appointment by the Governor as such official reporters. Sec. 6, Ib.

1850. Special reporter.—In case any official reporter shall not have been appointed in any circuit, or where the official reporter is disqualified or unable to perform his duties, it shall be within the discretion of the judge to appoint a special reporter in any case, civil or criminal, upon demand of any of the parties therefor; said special reporter shall perform the same services, receive the same pay in the same manner as the official reporter.

1851. Appointment of deputies.—Such official reporter may appoint one or more deputies. Such deputies shall have the power to perform any duty that the official reporter might perform, but such official reporter shall be responsible for the action of the deputy.

CHAPTER VIII.

SEAL OF THE CIRCUIT COURT.

1852. (1400.) Attorney-General to devise.—The Attorney-General shall devise suitable seals for the circuit courts Ch. 1657, Sec 1, Aug. 6, 1868.

in each county not now provided for, and shall deposit in the office of the Secretary of State and of the clerk of the Supreme Court an impression and description thereof, certified by him. The cost and expense of procuring such seal shall be paid by the State Treasurer after audit and allowance by the Comptroller upon certificate of the Attorney-General, and the cost of the seal for each county shall be repaid to the Treasurer by such county.

He shall in like manner procure new seals to replace those which may be lost or destroyed. In case of the loss or destruction of such seals, the private seal of the clerk shall suffice until an official seal be provided.

CHAPTER IX.

ITS RECORDS.

ARTICLE 1.—Records of, from circuit courts to be. Section.....1853
2.—From territorial superior courts to be. Section.....1854
3.—From county courts to be. Sections.....1855-1858

ARTICLE 1.

RECORDS OF, FROM CIRCUIT COURTS, TO BE.

1853. (1402.) Judgments, decrees, orders, etc.—All the records, judgments, orders and decrees of the several circuit courts, in the respective counties, made and entered before July 28th, 1868, shall be taken and held to be the records, judgments, orders and decrees of the circuit courts as established in said counties July 28th, 1868, and may be amended and enforced according to law and the practice of said courts.

Ch. 1629, Acts 1869, Sec. 9.

ARTICLE 2.

RECORDS OF, FROM TERRITORIAL SUPERIOR COURTS, TO BE.

1854. (1403.) Such records described.—The files, rolls and books of record of the superior courts of the several dis-

Ch. 520, Sec. 2, Jan. 6, 1853.

tricts of the Territory of Florida remaining in the clerk's offices of the respective counties, so far as the same, by the concurrence of the Congress of the United States and the Legislature of this State, may relate to matters of appropriate State authority and jurisdiction, are placed in the custody and under the control of the circuit courts of this State in the respective counties thereof, where the said superior courts were held and the records kept, and shall be deemed, held and taken to be files, rolls and records of the said circuit courts; and the said circuit courts may lawfully have and exercise such judicial cognizance and power over them as the said courts may lawfully have and exercise over their own files, rolls and records.

ARTICLE 3.

RECORDS OF, FROM LATE COUNTY COURTS, TO BE.

1855. (1404.) Proceedings in civil actions.—All civil actions pending in county courts of the State of Florida on the 4th day of May, 1875, where the amount sued upon exceeds the sum of one hundred dollars, are transferred to the circuit courts of the respective counties, and the clerks of the courts are directed to verify and certify the papers in such cases to the circuit courts, and to place the same upon their dockets. The defendants in all such actions shall be duly notified to appear and plead, and such pleadings shall be conducted upon the principles and according to the rules governing the court in which said actions were begun. Ch. 3004, Acts 1877. Sec. 1.

1856. (1405.) Judgments.—All judgments obtained in the county courts previous to the said 4th day of May, 1875, shall be certified and transferred to the circuit courts, and said courts shall proceed therein as though said actions and proceedings had been commenced in said circuit courts. Ib., Sec. 2.

1857. (1406.) Costs.—All costs in actions mentioned in the two preceding paragraphs, incurred by the transfer, shall follow the action. Ib., Sec. 3.

1858. Executions.—Executions on judgments of county courts may be levied upon real estate, subject to levy, in any county, when a transcript of the judgment of said courts is filed and recorded in the office of the clerk of the circuit court Sec. 1, Ch. 4725, Acts 1899.

of said county; and the real estate so levied upon may be sold under such executions in the same manner as under executions from the circuit courts.

CHAPTER X.

CHANCERY JURISDICTION AND PROCEDURE OF THE CIRCUIT COURT.

ARTICLE 1.—Its powers in vacation. Section..... 1859
2.—Locality of actions. Sections.....1860-1861
3.—Its process. Sections.....1862-1866
4.—Its pleadings. Sections.....1867-1876
5.—Its practice. Sections.....1877-1878
6.—Evidence in chancery. Sections.....1879-1880
7.—Masters in chancery. Sections.....1881-1895
8.—Decrees in chancery. Sections.....1896-1902
9.—Petitions for rehearing. Sections.....1903-1905
10.—Appeals in. Sections.....1906-1912

PROCEEDINGS IN PARTICULAR CASES.

11.—Injunctions. Sections.....1913-1920
12.—Ne Exeat. Sections.....1921-1924

STATUTORY PROCEEDINGS IN CHANCERY.

13.—Divorce and alimony. Sections.....1925-1938
14.—Partition. Sections.....1939-1947
15.—Equitable garnishment. Section..... 1948
16.—Avoidance of multiplicity of suits in land matters. Sections.....1949-1950
17.—Removal of disability of minors. Sections.....1951-1954
18.—Removal of disability of married women. Sections....1955-1959
19.—Enforcement of liens. Section..... 1960
20.—Creditors' bills. Section.....1961-1965

ARTICLE 1.

POWERS OF CHANCERY COURTS IN VACATION.

Nov. 7, 1828, Sec. 1; Ch. 521 Sec. 6, Jan. 7, 1853.

1859. (1407.) Action to be as effective as in term.—The circuit courts, sitting in chancery, shall always be kept open for the issuing and return of process, making, hearing, and deciding motions, presenting, arguing and deciding upon petitions, granting injunctions and passing interlocutory and final decrees and orders. And all action in said matters in vacation shall have the same force and effect as if done in term time.

ARTICLE 2.

LOCALITY OF ACTIONS IN CHANCERY.

1860. (1408.) Provisions at law to govern.—All provisions of law governing locality of actions at law shall, when they can be made applicable, govern those in chancery.

1861. Locality in applications for receivers when property in more than one judicial circuit.—Whenever an application shall be made for the appointment of a receiver to take charge of either real or personal property, or both, and the property is situated in more than one of the judicial circuits of the State of Florida, the court in appointing said receiver shall have jurisdiction over the entire property for the purposes of that suit: Provided, That the application for appointment of the receiver must be made to the judge of a judicial circuit in which the principal or main place of business, residence or office of the defendant is situated; and the court to which such application is made shall have exclusive jurisdiction thereof, and any action on the application by the said court, either affirmative or negative, shall be final, subject, however, to a right of appeal. Sec. 1, Ch. 4986, Acts 1901.

ARTICLE 3.

PROCESS, AND SERVICE IN CHANCERY.

Process. Sections 1862-1864
Service of process. Sections.....1865-1866

PROCESS IN CHANCERY.

1862. (1409.) When to issue.—

1. In First Instance.—No subpoena in chancery shall issue until a bill of complaint shall have been filed in the clerk's office. Nov. 7, 1828, Sec. 4.

2. Alias.—If process shall not be returned, or shall be returned unexecuted, the clerk of the court from which it issued shall issue a similar process, if the same shall be required by the party at whose instance it was originally issued.

When chancery suit is pending.—Thebaut v. Canova, 11 Fla., 143. Effect of pendency.—Ib.

1863. (1410.) When returnable.—It shall be returnable to the rule day, and within the time provided for writs of summons at law.

1864. (1411.) Form of.—

1. Form Prescribed.—The form of subpoena to answer shall be as follows:

Ib., Sec. 8.

The State of Florida to ....., Greeting:

You are hereby commanded and strictly enjoined that, laying all other business aside, and notwithstanding any excuse, you personally be and appear before the judge of our court for the county of ....., on the ..... day of ....., at the court house of said county, to answer to a bill of complaint exhibited against you in our said court by ....., and to do further and receive what our said court shall consider in that behalf; and this you are not to omit, under a penalty of $500.

Witness the Honorable ....., judge of said court, the ..... day of ....., in the year A. D. 190..

2. Number of Defendants To Be Included In.—The names of all defendants, however numerous, may be included in one subpoena.

Ib., Sec. 9.

SERVICE AND RETURN OF PROCESS IN CHANCERY.

1865. (1412.) Personal service.—

1. Service.—Personal service of process, and of orders and decrees in chancery, to be made upon parties to be served, natural or corporate, shall be governed by the provisions of law applicable to the service of a writ of summons ad respondendum. The copy served shall have endorsed thereon the name of the court from which the subpoena issued, the title of the cause, the words, "Copy of subpoena," and the name of the complainant's solicitor.

Ibid.

Manner of service on defendant wife.—McLane v. Piaggio Bros., 24 Fla., 71; 3 So. Rep. 723. Service on agent does not bind principal.—Caro v. Pensacola City Co., 19 Fla., 766. Service on infants.—Thompson v. McDermot, 19 Fla., 852.

2. Return of Officer.—The return upon process in chancery of the officer executing the same shall be governed by the provisions of law applicable to the return upon a writ of summons ad respondendum. When service of process is made by any person other than the sworn officer of the court whence it issued, affidavit of the time and manner of the

service shall be made and returned with the original subpoena.

Return by deputy sheriff when sufficient.—Johnson v. Johnson, 23 Fla., 413; 2 So. Rep. 834. When a nullity.—Gibbons v. Pickett, 31 Fla., 147; 12 So. Rep. 17. May be served by a private person.—Thebaut v. Canova, 11 Fla., 143. Statute must be strictly pursued.—Stanley v. Arnow, 13 Fla., 361.

1866. (1413.) Constructive service.—

1. Obtaining Order for Publication.—Whenever the complainant, his agent or attorney, shall state in a sworn bill or affidavit, duly filed, the belief of the affiant that the defendant is a resident of a state or country other than this State, specifying as particularly as may be known to affiant such residence, or that his residence is unknown, or that, if a resident, he has been absent more than sixty days next preceding the application for the order of publication, and that there is no person in the State the service of a subpoena upon whom would bind such defendant, or that he conceals himself so that the process cannot be served upon him, and further states the belief of the affiant as to the age of the defendant being over or under 21 years, or that his age is unknown, the judge or clerk of the court in which such bill shall have been filed shall make an order against the defendant requiring him to appear to the bill upon a day to be fixed by the order, not less than thirty nor more than fifty days from the time of the making of the order, if he be stated therein to be a resident of the United States, and not less than fifty nor more than eighty days if he be stated to be a non-resident of the United States, or if his residence be stated as unknown. For the purpose of this section, the insular possessions of the United States shall be regarded as foreign countries.

Ch. 3589, Sec. 1, Feb. 12, 1885; As amended by Ch. 4129, Acts 1893.

2. Publication of Order.—The clerk shall have all orders of publication against an absent defendant, whether made by the judge or himself, published with as little delay as may be, in such newspaper as may be designated in the order, once a week, for four consecutive weeks, if the defendant be stated to be a resident of the United States, or if his residence be stated to be unknown, for eight consecutive weeks; he shall also, within twenty days of the making of the order, post a copy of the said order at the door of the court house of the county, and send by mail a copy to the defendant, if his residence be shown by the bill or affidavit.

Defective service waived by demurrer to bill.—Lente v. Clarke, 22 Fla., 515. Or by answer.—Thebaut v. Canova, 11 Fla., 143.

The law must be strictly complied with in service by publication.—Shrader v. Shrader, 36 Fla., 503; 18 So. Rep. 672. Order of publication is

not properly issued until bill is filed.—Benner v. Street, 32 Fla., 274; 13 So. Rep. 407. Proof of publication must be made.—Tunno v. Robert, 16 Fla., 738.

(See Chapter 5393, Appendix.)

ARTICLE 4.

PLEADINGS IN CHANCERY.

The bill. Sections.....1867-1868
The answer. Section.....1869
Pleas and demurrers. Sections.....1870-1873
Replications. Sections 1874-1876

Nov. 7, 1828, Sec. 19.

1867. (1414.) Amendment of.—The complainant may, as of course, amend his bill at any time before the answer, plea or demurrer filed and without costs; but if the defendant's appearance be entered, and the defendant has procured a copy of the bill, the complainant shall furnish the defendant with a certified copy of the amendment gratis. No amendment in a matter of substance shall be allowed, as of course, to any bill which has been sworn to.

Effect of amendment.—Howard v. P. & A. R. R. Co., 24 Fla., 560; 5 So. Rep. 356. When amendment not permitted.—Smith v. Smith, 18 Fla., 789. Amended bill may be demurred to, although demurrer to bill before amendment overruled.—Bowen v. Hoeg, 15 Fla., 403. In case of specific performance, after publication.—Lewis v. Yale, 4 Fla., 418.

Ch. 2004, Sec. 1, Feb. 11, 1874.

1868. In cases of foreclosure.—In the foreclosure of any mortgage the original mortgage or a certified copy of the same, certified by the clerk of the circuit court of the county in which the same shall have been recorded, shall form a part of the bill of complaint for the foreclosure of such mortgage.

Copy of mortgage must be certified by proper officer.—Broome v. Broome, 17 Fla., 607.

Judgment and decrees.—Conclusiveness on grantees—Not parties—Not bound.—Allowance of plea.—Replication.—Austin v. Hoxsie, 44 Fla., 32; 32 So. Rep. 878; Logan v. Steiff, 36 Fla., 473; 18 So. Rep. 762; Wilson v. Mitchell, 43 Fla., 107; 30 So. Rep. 703.

Reformation of mortgage.—Mistake.—Description of property.—Married woman.—Herring v. Fitts, 43 Fla., 54; 30 So. Rep. 804.

Injunction.—Pleading.—Louisville & N. R. R. Co. v. Gibson et al.; 31 So. Rep. 230.

BILLS IN CHANCERY.

Parties to Bills. Necessary Parties.—Administrators, when.—Bevill v. Smith, 25 Fla., 209; 6 So. Rep. 62. Trustees of married woman.—Prentiss v.

Paisley, 25 Fla., 927; 7 So. Rep. 56. Legal owner of title, in foreclosure.—Berlack v. Halle, 22 Fla., 236. Representative of deceased contracting party.—Marks v. Baker, 20 Fla., 920. Heirs of decedent in suit affecting homestead.—Wilson v. Freidenberg, 19 Fla., 461. Next friend of married woman.—Fairchild v. Knight, 18 Fla., 770; Smith v. Smith, 18 Fla., 789. Next friend to an infant. Guardian not sufficient.—Sanderson's admr. v. Sanderson, 17 Fla., 820. Married woman and children interested in property involved.—Thrasher v. Doig, 18 Fla., 809. Grantee in suit to set aside deed.—Mattair v. Payne, 15 Fla., 682. Representative of insolvent decedent to bill to enjoin judgment against.—Scarlett v. Hicks, 13 Fla., 314. All wards interested in suit against guardian for account.—Hendry v. Clardy, 8 Fla., 77. Wife in suit by husband for her statutory separate property.—Lignoski v. Bruce, 8 Fla., 269. Surviving partner to bill by creditors against representative of deceased partner.—Fillyau v. Laverty, 3 Fla., 72. Only necessary parties should be brought in without consent of complainant.—Fagan v. Barnes, 14 Fla., 53. When heirs not precluded by failure to join as complainants.—Anderson v. Northrop, 30 Fla., 612; 12 So. Rep. 318. Objection that married woman should have sued by next friend, when cannot be raised first time in appellate court.—Taylor v. Brown, 32 Fla., 334; 13 So. Rep. 957.

Application to be made a party does not of itself make the applicant a party.—Bigelow v. Stringfellow, 25 Fla., 366; 5 So. Rep. 816. No such practice as compelling a plaintiff to join another as co-plaintiff.—Carter v. Smith, 35 Fla., 692; 17 So. Rep., 411.

Proper Parties.—Sureties to guardian's bond in suit to account.—Pace v. Pace, 19 Fla., 438; Pfeiffer v. Knapp, 17 Fla., 144. To bill of specific performance.—Fagan v. Barnes, 14 Fla., 53. To bill to set aside judicial proceedings as fraudulent.—Howse v. Moody, 14 Fla., 59. To bill to foreclosure.—Rich v. Eichelberger, 13 Fla., 170. When vendor of land in suit to enforce lien against vendee.—Belton v. Williams, 4 Fla., 11. When vendee.—Ib.

Necessary Parties.—Trustee holding legal title in proceedings affecting the estate.—Winn v. Strickland, 34 Fla., 61; 16 So. Rep. 606. Heirs of deceased administrator when.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163. Court will not adjudicate matters when parties not served with process or before the court.—Nelson v. Haisley, 39 Fla., 145; 22 So. Rep. 265; Post v. Adams, 29 Fla., 207; 22 So. Rep. 652; Brown v. Solary, 37 Fla., 102; 19 So. Rep. 161. Failure to object to absence of, not a waiver of right.—Robinson v. Howe, 35 Fla., 73; 17 So. Rep. 368. All parties materially interested in the subject matter of the suit.—Ib. Assignee of judgment in suit to enforce the judgment.—Sammis v. Wightman, 31 Fla., 45; 12 So. Rep. 526.

Unnecessary and Improper Parties.—Incumbrancer who has parted with lien.—Bigelow v. Stringfellow, 25 Fla., 366; 15 So. Rep. 816. Person who has parted with interest.—Bridges v. Thrasher, 22 Fla., 383; Robinson v. Springfield, 21 Fla., 203; Brown v. Solary, 37 Fla., 102; 19 So. Rep., 161. Sheriff, to bill to restrain execution.—Fairchild v. Knight, 18 Fla., 770. Sheriff to bill to enjoin proceedings to exempt personal property.—Loring v. Wittich, 1 Fla., 495. Officers and agents of corporations when.—State v. J. P. & M. R. R. Co., 15 Fla., 201. Agent instead of owner of land in bill to enjoin collection of tax.—King v. Gwynne, 14 Fla., 32. Cestui que trust, when.—Young v. Whiting, 18 Fla., 54. Legatee in suit to set aside will.—Thompson v. McDermott, 19 Fla., 852. Married women in suit to enforce lien on homestead for purchase price.—Porter v. Teate, 17 Fla., 813. Beneficiaries under secret trusts in suit by innocent purchaser.—Broward v. Hoeg, 15 Fla., 370. Prior mortgagee in suit to foreclose.—Ib.

The assignor of a judgment sought to be enforced.—Sammis v. Wightman, 31 Fla., 45; 12 So. Rep. 536. Assignor in an assignment for benefit of creditors.—Locket v. Robinson, 31 Fla., 134; 13 So. Rep. 649.

Proof must be confined to the issues—relief can not be had for matters not charged in the bill, although proven.—Anderson v. Northrop, 30 Fla., 612; 12 So. Rep. 318; Tate v. Pensacola, etc., Co. 37 Fla., 439; 20 So. Rep. 442.

Effect Of and Remedy For Mispleading as to Parties.—Omission of name of defendant in introductory part of bill.—McCoy v. Boley, 21 Fla., 803. Joinder of improper parties does not affect jurisdiction.—Gordon v. Clark, 10 Fla., 179. Defective parties supplied upon appeal.—Sloan v. Sloan, 21 Fla., 589. Plea in abatement for total absence of necessary parties.—Wilson v. Dibble, 16 Fla., 782. Remedy when person made party without his privity or consent.—So. Life Ins. Co. v. Lanier, 5 Fla., 110.

Frame of Bills.—Bill sufficient although styled petition.—Zehnbar v. Spilburn, 25 Fla., 591; 6 So. Rep. 214. Omission of defendant from prayer for process.—Keen v. Jordan, 13 Fla., 327. Multifariousness. What is and what is not.—Robinson v. Springfield Company, 21 Fla., 203; Hayden v. Thrasher, 18 Fla., 795; Trustees, etc., v. Sanford, 17 Fla., 162; Bauknight v. Sloan, 17 Fla., 284; Keyser v. Simmons, 16 Fla., 268; Mattair v. Payne, 15 Fla., 682; Fagan v. Barnes, 14 Fla., 53; Howse v. Moody, 14 Fla., 59; Rich v. Eichelberger, 13 Fla., 170. Allegations when sufficient. In creditors bill for fraud of debtor.—Reel v. Livingston, 34 Fla., 377; 16 So. Rep. 284. In exemption matters.—Smith v. Gufford, 36 Fla., 481; 18 So. Rep. 777. Heirs for an accounting.—Anderson v. Northrop, 30 Fla., 612; 12 So. Rep. 318. Asserting mechanics liens on married woman's property.—Nutt v. Coddington, 34 Fla., 77; 15 So. Rep. 667; Schnabel v. Betts, 23 Fla., 178; 1 So. Rep. 692; O'Neal v. Percival, 25 Fla., 118; 5 So. Rep. 809; Garvin v. Watkins, 29 Fla., 151; 10 So. Rep. 818.

Insufficient allegations for appointment of receiver.—Stockton v. Harmon, 32 Fla., 312; 13 So. Rep. 833.

Necessary allegations, right or title upon which complainant claims.—West v. Reynolds, 35 Fla., 317; 17 So. Rep. 740. In charging devastavit.—Dean v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163. To have an instrument declared a lien or mortgage.—Hope v. Johnson, 28 Fla., 55; 9 So. Rep. 830.

To enforce lien for municipal taxes.—Parker v. Jacksonville, 37 Fla., 342; 20 So. Rep. 583. To reach alleged personal property of husband.—Marye v. Root, 27 Fla., 453; 8 So. Rep. 636. To remove cloud upon title.—Watson v. Holliday, 37 Fla., 488; 19 So. Rep. 640; Richards v. Morris, 39 Fla., 205; 2 So. Rep. 650; Carter v. Smith, 35 Fla., 169; 17 So. Rep. 411. For relief against irreparable injury.—Willingham v. King, 23 Fla., 478; 2 So. Rep. 851.

Prayer of Bills.—What relief given under general prayer, exception.—P. & G. R. R. Co. v. Spratt, 12 Fla., 26; McLeod v. Dell, 9 Fla., 426; Glinski v. Zawadski, 8 Fla., 405. If complainant not entitled to specific relief prayed for, may have other consistent specific relief.—Lee v. Patten, 34 Fla., 149; 15 So. Rep. 775.

Allegations of Bills as Limiting Relief.—Only matters charged in issue are provable.—St. Andrews, etc., Co. v. Campbell, 5 Fla., 560.

Dismissal of Bills. By Complainant.—Is of course.—State v. F. C. R. R. Co., 15 Fla., 690. But not after appeal.—Is of course.—Ib.; Holland v. State, 15 Fla., 549, by defendant and effectuation of supersedeas.—By Court.—On application for preliminary injunction.—Sauls v. Freeman, 24 Fla., 209; 4 So. Rep. 525. For uncertainty of proof.—Marvin v. Hampton, 18 Fla., 131.

Bills of Discovery.—What Not.—Thrasher v. Doig, 18 Fla., 808.

Cross Bill; When Sustainable.—Griffin v. Fries, 23 Fla., 173; 2 So. Rep. 266. Time for filing.—Finlayson v. Lipscomb, 16 Fla., 751. Cross bills.—

Definitions and requisites.—Ledwith v. Jacksonville, 32 Fla., 1; 13 So. Rep. 454. When to be filed.—Ballard v. Kennedy, 34 Fla., 483; 16 So. Rep. 327. Mere matter of defense improper allegations in.—Thompson v. Kyle, 39 Fla., 583; 23 So. Rep. 12.

Bills of Interpleader.—Sammis v. L'Engle, 19 Fla., 800.

Bills of Review.—When lie.—Prentiss v. Paisley, 25 Fla., 927; 7 So. Rep. 56; Mattair v. Card, 19 Fla., 455; Thompson v. Maxwell, 16 Fla., 773; Mitchell v. Sammis, 15 Fla., 308; Owens v. Love, 9 Fla., 325. When do not lie.—Wordehoff v. Evers, 18 Fla., 339. By whom brought.—Paul v. Frierson, 21 Fla., 529.

Supplemental Bill in Nature of Bill of Review.—Finlayson v. Lipscomb, 16 Fla., 751; (See Owens v. Love, 9 Fla., 325,); Mitchell v. Sammis, 15 Fla., 308; Finlayson v. Lipscomb, 15 Fla., 558. To review interlocutory decree.—Putnam v. Lewis, 1 Fla., 455.

Supplemental Bills.—Definitions and Requisites.—Ledwith v. Jacksonville, 32 Fla., 1; 13 So. Rep. 454. When does not introduce a new subject of litigation.—State v. Black River Phosphate Co., 32 Fla., 82; 13 So. Rep. 454. Not maintainable for cause of action accruing after filing original bill.—Newbert v. Massman, 37 Fla., 91; 19 So. Rep. 625.

Supplemental bill after interlocutory decree enrolled to bring forward new matter.—Owens v. Love, 9 Fla., 325.

Bill of review on the ground of newly discovered evidence not a matter of right. Leave to file should first be obtained and this rests in the sound discretion of the court, subject to review.—Reynolds v. F. C. & P. R. R. Co., 42 Fla., 387; 28 So. Rep. 861. Bill in nature of, proper to set aside void decree of divorce.—Shrader v. Shrader, 36 Fla., 502; 18 So. Rep. 572.

Instance when bill of review lies to correct error apparent of record.—Prentiss v. Paisley, 25 Fla., 927; 7 So. Rep. 56.

THE ANSWER.

1869. (1417.) Insufficient answers and proceedings thereon.—If an answer shall be considered insufficient, the complainant's solicitor may file exceptions thereto at any time before the next rule day, after notice of the filing thereof in the clerk's office, and enter a rule with the clerk that the defendant make a better answer before the next succeeding rule day, notice of which rule and the filing of the exceptions shall be served upon the defendant or his solicitor; and if the defendant shall insist on the sufficiency of his answer, the complainant may set down his exceptions for argument, and if they are sustained, no further or other answer shall be received but on payment of costs; and if a second answer put in be adjudged insufficient, the defendant shall pay double costs; and the defendant may also in such case be examined on interrogatories and be committed until he sufficiently answer them; or the plaintiff may move the court to take so much of the bill as is not answered as confessed,

Nov. 7, 1828, Sec. 22.

and may file his replication, obtain testimony and proceed to hearing in the usual manner.

Impertinence in answer and exceptions therefor.—Bush v. Adams, 22 Fla., 177.

Answers Generally.—Effect of answer as evidence.—Christy v. Burch, 25 Fla., 942; 2 So. Rep. 258; Foster v. Ambler, 24 Fla., 519; 5 So. Rep. 263; Gainer v. Russ, 20 Fla., 157; Stephens v. Orman, 10 Fla., 9; Carr v. Thomas, 18 Fla., 736; Carter v. Bennett, 6 Fla., 214; White v. Walker, 5 Fla., 479; Orman v. Bernard, 5 Fla., 528. Joint answer of husband and wife as evidence against the wife.—Lewis v. Yale, 4 Fla., 418. Amendment of answer; when permissible and when not.—Hart v. Sanderson's admr., 18 Fla., 103. What answer of res adjudicata should contain.—Marvin v. Hampton, 18 Fla., 131. Affirmative relief not granted upon answer.—Wooten v. Bellinger, 17 Fla., 289. Answer waives objection that remedy at law exists, unless court wholly incompetent to grant relief.—Gordon v. Clarke, 10 Fla., 179; Griffin v. Orman, 9 Fla., 22.

General denial of material allegations of the bill sufficient to make issue.—Stackpole v. Hancock, 40 Fla., 362; 24 So. Rep. 914.

Signing affidavit of verification sufficient signature.—Ballard v. Kennedy, 37 Fla., 483; 16 So. Rep. 327. But it is only the answer of the defendants who swear to it.—Ib.

Affirmative defenses not responsive to bill are put in issue by general replication and must be proven.—Lenders v. Thomas, 35 Fla., 518; 17 So. Rep. 633. Sworn answer as evidence in, not evidence unless directly responsive to bill.—Kellogg v. Singer & Co., 35 Fla., 99; 17 So. Rep. 68.

Separate answer of one defendant not evidence against others.—Stackpole v. Hancock, 40 Fla., 362; 24 So. Rep. 914.

Sworn answer when required by bill, denying the allegations of the bill must be overcome by testimony of two witnesses or one witness and corroborating circumstances.—Day v. Jones, 40 Fla., 443; 25 So. Rep. 275.

PLEAS AND DEMURRERS.

1870. (1418.) May be pleaded together, and with answer.

Ib., Sec. 16.

The defendant may, at any time before the bill is taken as confessed, or afterward with the leave of the court, demur or plead to the whole bill or part of it, and answer the residue thereof in such manner as is authorized by the practice of the high court of chancery in England.

Demurrers.—When general demurrer should be overruled.—El Modelo Cigar Manufacturing Company v. Gato, 25 Fla., 886; 7 So. Rep. 23. May be good as to one defendant and not as to other.—Dzialynski v. Bank of Jacksonville, 23 Fla., 346; 2 So. Rep. 696. Certificate of counsel required to demurrer. Striking out demurrer not certified. Waiver of certificate.—Keen v. Jordan, 13 Fla., 327. Demurrer must not set up matters dehors bill.—Southern Life Insurance Co. v. Lanier, 5 Fla., 110. Demurrer for misjoinder of complainant must be made in limine.—Ib. Waiver by not demurring to supplemental bill.—Crump v. Perkins, 18 Fla., 353. Court will not notice defect in form unless demurred to.—Gordon v. Clarke, 11 Fla., 179. Demurrer to answer unknown.—Edwards v. Drake, 15 Fla., 666.

May be good as to one defendant and bad as to others.—Dzialynski v. Bank, 23 Fla., 346; 2 So. Rep. 696. Overruled court may fix time for de-

fendant to plead.—Myers v. McGahagan, 26 Fla., 303; 8 So. Rep. 447. Fatally defective without affidavit and certificate of counsel.—Taylor v. Brown, 32 Fla., 334; 13 So. Rep. 957. When should be overruled.—Dunham v. Stephenson, 41 Fla., 112; 25 So. Rep. 284; El Modelo, etc., Co. v. Gato, 25 Fla., 886; 7 So. Rep. 23; Hill v. Meinhardt, 39 Fla., 111; 21 So. Rep. 805. Bill not demurrable because prayer for relief is in the alternative.—Fla. So. R. Co. v. Hill, 40 Fla., 1; 23 So. Rep. 566. When demurrer should be sustained.—West v. Reynolds, 35 Fla., 317; 17 So. Rep. 740; Smith v. Gauby, 43 Fla., 143; 30 So. Rep. 683.

1871. (1419.) May be incorporated in the answer.—The defendant may in all cases, instead of filing a formal plea or demurrer, insist on any special matter in his answer, and have the same benefit thereof as if he had pleaded the same matter or had demurred to the bill. Ib., Sec. 21.

Practice at hearing. When bill contains no equity.—Budd v. Gamble, 13 Fla., 265. Special matter in answer available as if pleaded.—Hollingsworth v. Handcock, 7 Fla., 338; Watson v. Holliday, 37 Fla., 488; 19 So. Rep. 640.

1872. (1420.) Complainant's dealing with.—The complainant may set down a demurrer or plea to be argued, or he may take issue upon the plea; if upon an issue the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him. Ibid.

Practice upon sustaining plea.—Crump v. Perkins, 18 Fla., 353.

1873. (1421.) Effect of overruling.—If a plea or demurrer has been overruled, no other plea or demurrer shall thereafter be received, but the defendant shall answer the complainant's bill; and if he fail to do so before the next rule day thereafter, the same, or so much thereof as was covered by the plea or demurrer, may be taken as confessed and the matter thereof be decreed accordingly. Ib., Sec. 20.

Effect and treatment of plea in support of answer.—Hart v. Sanderson's admr., 16 Fla., 264. Such plea discussed.—Crump v. Perkins, 18 Fla., 353. Hearing on bill, plea and answer.—Hart v. Sanderson's admr., 18 Fla., 103. Pleas when must deny avoiding facts alleged in bill.—Henderson v. Chaires, 35 Fla., 423; 17 So. Rep. 574. Requisites setting up a prior decree in bar.—DeCosta v. Dibble, 40 Fla., 418; 24 So. Rep. 911. Error to dismiss bill on sustaining plea unless plea constitutes defense to whole bill.—Durham v. Stephenson, 41 Fla., 112; 25 So. Rep. 284. Proper method of testing sufficiency of plea is to set it down for argument.—Spaulding v. Ellsworth, 39 Fla., 76; 21 So. Rep. 812. Upon such hearing every such allegation in the bill not denied by the plea, and every allegation in the plea is taken as true.—Ib.; Brown v. Solary, 37 Fla., 102; 19 So. Rep. 161. But only for the purpose of testing sufficiency.—Wilson v. Mitchell, 43 Fla., 107; 30 So. Rep. 703. Without verification, signature and affidavit of counsel may be ignored.—Trower v. Bernard, 37 Fla., 226; 20 So. Rep. 241.

REPLICATIONS.

1874. (1422.) When to be filed.—General replications to answers shall be filed at the rule day next succeeding the filing of the answer.

Ib., Sec. 17.

1875. (1423.) Special replications to answer not allowed. No special replication to an answer shall be filed but by leave of the court or judge thereof for cause shown.

Ib., Sec. 21.

1876. (1424.) Failure to reply to, or set down pleas or demurrer.—If a complainant shall not reply to or set down for hearing any plea or demurrer before the next rule day after the filing of the plea or demurrer, the bill may be dismissed with costs.

ARTICLE 5.

PRACTICE IN CHANCERY.

Ib., Sec. 32.

1877. (1425.) What practice to prevail.—In the absence of provisions of the law or rules of practice of this State, the rules of practice in the courts of equity of the United States, as prescribed by the Supreme Court thereof, under the act of Congress of the 8th of May, one thousand seven hundred and ninety-two, shall be rules for the practice of the courts of this State when exercising equity jurisdiction; and when the rules of practice so directed by the Supreme Court do not apply, the practice of the courts shall be regulated by the practice of the high court of chancery of England.

Rules adopted by U. S. Supreme Court after passage of this act in force.—Kahn v. Wenlander, 39 Fla., 210; 20 So. Rep. 653. When case should be dismissed under Rule 1, Rules of Practice in Equity.—Perry v. Wittich, 37 Fla., 237; 20 So. Rep. 238. Rules only authorize complainant to set down the cause for hearing upon bill and answer.—Gary v. Mickler, 2 Fla., 539; Rules 45 and 57 construed.—Stribling v. Hart, 20 Fla., 235. Rule 44 construed.—Lente v. Clarke, 22 Fla., 515; 1 So. Rep. 149; Johnson v. Johnson, 23 Fla., 413; 2 So. Rep. 834. Rule 90 construed.—Peck v. Spencer, 26 Fla., 23; 7 So. Rep. 642.

Ch. 77, Sec. 2, Jan 6, 1847.

1878. (1426.) Service of notices.—All notices in chancery to be served shall be served upon the opposite party or his solicitor, if residing within twenty miles of the courthouse in the proper county, personally, or if residing at a greater distance, by mail. Proof of the mailing shall be required by affidavit or certificate from the person mailing.

ARTICLE 6.

EVIDENCE IN CHANCERY.

1879. (1427.) Taken before issue.—Testimony in chancery may be taken at any time after the bill shall have been

filed, under the circumstances set forth in Section 1541, by a commission or by deposition before a justice of the peace. All the provisions of law relating to the obtaining and execution of commissions, and the taking of depositions before justices of the peace, at law, shall apply to the like proceedings in chancery.

1880. (1428.) Taken after issue.—Testimony to be taken after issue shall be taken upon commission as hereinbefore provided, or before an examiner to be appointed by the court, or orally before the court.

Commissions may be obtained in such cases without stating any reasons therefor other than that the case is at issue, and may issue for the taking of testimony of resident witnesses.

Examiners when appointed may take the testimony upon written, direct and cross interrogatories, or orally, as the court may in its order direct, or as the rules of practice of the court may prescribe.

Oral examinations before the court shall only be had after order to that effect made by the court upon motion by either party. The testimony shall be taken down in writing, and filed in the cause.

Enlargement of time for taking is in discretion of court.—Tuten v. Gazen, 18 Fla., 751. Where equities of bill are denied by responsive allegations of answer and case is submitted upon bill, answer and replication, the bill should be dismissed.—Patton v. Brunswick, 23 Fla., 283; 2 So. Rep. 366.

Evidence unnecessary where allegations of bill are admitted in answer.—Clarkson v. Louderback, 36 Fla., 660; 19 So. Rep. 887. Consent makes affidavits evidence.—Lawyers, etc., Co. v. Bennett, 34 Fla., 302; 16 So. Rep. 185. Reference to a master to take testimony should be made by a judge, not by counsel.—Trower v. Bernard, 37 Fla., 226; 20 So. Rep. 241.

ARTICLE 7.

MASTERS IN CHANCERY.

Appointment of. Sections 1881
Oath of. Section 1882
General duties and powers of. Section 1883
Process of. Sections 1884
Bond of. Section 1885
Proceedings before. Sections 1886-1893
Compensation of. Section 1894
Special masters. Section 1895

Ch. 51, Sec. 1, Dec. 27, 1845, as amended by Sec. 1, Ch. 4131, Acts 1893.

1881. (1429.) Appointment of.—Judges of the circuit court may appoint in writing from among the members of the bar in such circuit as many general masters in chancery as such judges may find necessary, and they shall continue in office until removed by the court. The appointment shall be recorded in the minutes of the court.

Ch. 51, Acts 1845, Sec. 2.

1882. (1430.) Oath of.—Every person appointed such master in chancery shall, before he shall proceed to discharge any of the duties of his said office, take the oath required of officers by the Constitution and laws of this State; and such oath shall be entered at full length on the minutes of the court by which such master is appointed.

1883. (1431.) General duties and powers of.—

Ib., Sec. 3.

1. Duties Of.—Every master in chancery shall perform, under the direction of the court, all the duties which, according to the practice in chancery, appertain to the office.

Ib., Sec. 18.

2. Powers Of.—He shall, within his respective county, have all the powers conferred on masters in chancery by the rules of practice prescribed by the Supreme Court of the United States for the chancery courts of the United States, not inconsistent with the laws and rules of practice of this State.

Ib., Sec. 4.

He shall have power to administer all oaths and affirmations which are required by law, and to take and certify affidavits and depositions, to issue subpoenas for witnesses whose testimony is to be taken before him, and shall have the same power to compel the attendance of witnesses and to punish for contempt as is given to justices of the peace.

Ib., Sec. 5.

1884. (1432.) Process of.—Process issued by him shall be directed to the sheriff or any constable of said county.

Ib., Secs. 7, 8.

1885. (1433.) Bond of.—The court may require masters in chancery when appointed to dispose of property, real and personal, and when appointed as receivers, and when the same is not otherwise provided by law, to give bond and surety in such manner and with such penalty for the payment over of all moneys which may come to their hands, and for the due performance of their duties, as the court may direct.

Such bond shall be made payable to the State of Florida, and shall be for the benefit of all persons affected or aggrieved by any act or malconduct of the person required to give such bond.

PROCEEDINGS BEFORE.

1886. (1434.) Presentation of matter to.—Whenever a reference of any matter is made to a master in chancery to examine and report thereon, the party at whose instance or for whose benefit the reference is made shall cause such matter to be presented to the master for a hearing within the time limited by the court for such hearing; and if such party shall omit so to do, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the cost of the party procuring the reference. Ib., Sec. 9.

1887. (1435.) Time and place of hearing.—Upon every such reference it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceeding therein, and to give the notice thereof to each of the parties or their counsel; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed ex parte, or in his discretion to adjourn the examination and proceedings to a future day, giving notice to the absent party or his counsel of such adjournment. Ib., Sec. 10.

In cases not under default parties are entitled to notice of hearing before the master.—Ballard v. Lippman, 32 Fla., 481; 14 So. Rep. 154.

1888. (1436.) Speeding the proceedings.—It shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the court for an order to the master to speed the proceedings, and to make his report, and to certify to the court the reasons for any delay. Ib., Sec. 11.

1889. (1437.) Regulation of proceedings before.—The master shall regulate all the proceedings in every hearing when not otherwise specially instructed by the court, and administer all oaths and affirmations, and generally do all other acts and direct all inquiries and proceedings in the matters before him which may be necessary and proper to the justice and merits of the case and the rights of the parties. Ib., Sec. 12.

1890. (1438.) Evidence permissible before.—All affidavits, depositions and documents which have been previously made, read or used in the court upon any proceeding in any cause or matter, or when so directed by the court, may be used before the master. Ib., Sec. 13.

Court has supervision over master as to his fees.—Chandler v. Sherman, 16 Fla., 99. Should instruct him as to validity of items of account.—Owens v. Rhodes, 10 Fla., 319.

Master's report must be confined to the matters referred to him.—White v. Walker, 5 Fla., 478. Exception proper method of reaching errors in.—Harris v. Ferris, 18 Fla., 84; Nims v. Nims, 20 Fla., 204.

A decree directing a reference to a master is not a final decree.—Griffin v. Orman, 9 Fla., 22. Report must be confirmed before effective.—Ib.

Ib., Sec. 14.

1891. (1439.) Evidence before, to be in writing.—The evidence in all examinations shall be taken down in writing by the master, or by some other person by his order, in his presence, and filed with his report.

Ib., Sec. 17.

1892. (1440.) Fees of witnesses before.—The fees of witnesses before the master shall be the same as allowed in cases in the circuit court.

Ib., Secs. 15, 16.

1893. (1441.) Report of masters in chancery.—As soon as his report is ready he shall return the same into the clerk's office, and such report shall be filed by the clerk and the return thereof noted on the order book of the court.

In such report no part of any state of facts, charges, depositions, affidavits, examinations or answers already on file in the cause used before him shall be stated or recited; but such state of facts, charges, affidavits, depositions, examinations or answers shall be identified, specified and referred to so as to inform the court which state of facts, charge, affidavit, deposition, examination or answer were used by the master.

Insufficient report of master no basis for decree.—June v. Myers, 12 Fla., 310. So of report showing material errors on face.—White v. Walker, 5 Fla., 478. Must generally be confirmed before order can be made on it.—Griffin v. Orman, 9 Fla., 22. Report beyond matters referred is nullity.—White v. Walker, 5 Fla., 478. As is report more extensive than allegations and proof.—Ib. Erroneous on face review without exceptions.—Ib. Matter of stating partnership account.—Mims v. Mims, 20 Fla., 204. Of stating account between trustee and cestui que trust.—Merritt v. Jenkins, 17 Fla., 593.

Ib., Sec. 6.

1894. (1442.) Compensation of masters in chancery. The fees of the master shall be as follows:

Ch. 1815, Sec. 1, June 6, 1870.

Attendance on litigated case, per day	$2 00
Attendance on unlitigated case, per day	1 00
Attendance to settle litigated report, per day	2 00
Attendance to settle unlitigated report, per day	1 00
Deed or bill of sale, drawing	4 00
Deed, executing	1 00
Deposition of witness, taking, per 100 words	25
Exhibits, marking and numbering, each	05
Moneys (except moneys arising from sales), receiving and paying out, on first $500	4 1-2 per cent
On residue	3-4 of 1 per cent

Recognizance, taking 50
Report upon appointment of guardian..... 2 50
Sale, attending and adjourning..... 1 00
for making, the same fees as are allowed sheriffs.
For all other services the same fees as are prescribed for clerks of the circuit court. When no such fees are prescribed then he shall receive such compensation as the judge may fix. All fees shall be taxed as part of the costs of the cause.

Per diem of five dollars allowed under circumstances stated.—Chandler v. Sherman, 16 Fla., 99.

1895. (1443.) Special masters in chancery.—The court may appoint, for any particular service required by it, from among the members of the bar of such court, in active practice, special masters in chancery, who shall receive the same fees as general masters, and who shall be governed by all the provisions of law governing general masters, except that they shall not be required to make oath and give bond as required by Sections 1882 and 1885: Provided, however, Said judge may, in his discretion, appoint the clerk of the circuit court, or the county judge in any county, a special master in chancery in cases where the resident attorneys in such county are all interested on one side or the other of the matter in controversy: Provided, further, That in counties where there is no resident attorney the said judge may appoint any competent person to be a general or special master in chancery: And Provided, further, That in all cases upon a proper showing to the court that such appointment is advisable in the particular case, a person other than a member of the bar may be appointed.

Sec. 1443, Rev. Stat., 1892, as amended by Sec. 2, Ch. 4131, Acts 1893.

Misnaming him commissioner does not invalidate his action.—Mann v. Jennings, 25 Fla., 730; 6 So. Rep. 771.

ARTICLE 8.

DECREES IN CHANCERY.

Decrees, pro confesso. Sections.....1896-1899
Generally. Sections.....1900-1905

DECREES PRO CONFESSO.

1896. (1444.) When may be entered.—The defendant shall, unless the time shall be otherwise enlarged for cause

Ch. 77, Sec. 1, Jan. 6, 1847.

shown by the judge of the court upon motion for that purpose, file his plea, demurrer or answer to the bill in the clerk's office on the rule day next succeeding that fixed for an entry of appearance, whether the service shall have been personal or constructive; in default thereof, the complainant may, at his election, cause the clerk to enter an order (as of course) in the order book that the bill be taken pro confesso; and thereupon the cause shall be proceeded in ex parte, and the matter of the bill may be decreed by the court accordingly, if the same can be done without an answer and is proper to be decreed.

On what rule day taken.—Johnson v. Johnson, 23 Fla., 413; 2 So. Rep. 834; Lente v. Clarke, 22 Fla., 515. No notice required of entry at proper time.—Stribling v. Hart, 20 Fla., 235. Solicitor can not enter decree pro confesso.—Rushing v. Thompson's extrs., 20 Fla., 583. Decree pro confesso can not be entered against infant.—Thompson v. McDermott, 19 Fla., 852; Trustees, etc., v. Jacksonville, Pensacola and Mobile Railroad Company, 16 Fla., 708. Last clause of section applied.—Stribling v. Hart, 20 Fla., 235. Final decree without decree pro confesso not void.—Rushing v. Thompson's extrs., 20 Fla., 583. Such decree must conform to pleadings of which defendant has notice.—Trustees v. Jacksonville, Pensacola and Mobile Railroad Company, 16 Fla., 708. Appeal lies from such final decree.—Hart v. Stribling, 21 Fla., 136. What is open on appeal after decree pro confesso.—DeCottes v. Jeffers, 7 Fla., 284.

Decree.—Setting Aside.—Grounds.—Decree pro confesso.—Appeal.—Review.—Friedman et al. v. Rehm et al., 43 Fla., 330; 31 So. Rep. 234. After default clerk can not enter except on rule day without special authority of the court.—Ballard v. Kennedy, 34 Fla., 483; 16 So. Rep. 327; Ropes v. McCabe, 40 Fla., 388; 25 So. Rep. 273. After decree pro confesso defendant not entitled to notice or hearing in future proceedings.—Garvin v. Watkins, 29 Fla., 151; 10 So. Rep. 818; Price v. Bowden, 39 Fla., 218; 22 So. Rep. 657; Lembertz v. Coe, 34 Fla., 363; 10 So. Rep. 277. A plea not vertified or certified may be ignored and decree pro confesso entered.—Trower v. Bernard, 37 Fla., 226; 20 So. Rep. 24. May be taken by default after demurrer overruled.—Myers v. McGahagen, 26 Fla., 303; 8 So. Rep. 447. Entered improperly upon order.—Striking out a plea will be reversed.—Eldredge v. Wightman, 20 Fla., 687. Can not be entered for want of appearance, but only for want of demurrer, plea or answer.—Lente v. Clarke, 22 Fla., 515; 1 So. Rep. 149; Johnson v. Johnson, 23 Fla., 413; 2 So. Rep. 834.

Ch. 3589, Sec. 2. Feb. 12. 1885.

1897. (1445.) Prerequisites to enter upon constructive service.—The clerk, before a decree pro confesso upon constructive service shall be entered, must file with the papers a certificate that compliance with Section 1866 has been had, stating particularly the manner and time of such compliance.

Ch. 77, Sec. 1, Jan. 6, 1847.

1898. (1446.) Setting aside final decree upon decree pro confesso.—When the bill in any cause is taken pro confesso, the court may proceed to a decree, and such a decree rendered shall be absolute unless the court shall set aside the same or enlarge the time for filing the answer for cause shown upon motion and affidavit of the defendant, made and

filed within twenty days after the entry of the final decree; and no such motion shall be granted unless upon the payment of costs of complainant in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct for the purpose of speeding the cause.

What must be shown on application.—Keil v. West, 21 Fla., 508; Stribling v. Hart, 20 Fla., 235. Decree pro confesso may be opened on motion. Section discussed.—Ib. Action on motion to open reviewable by Supreme Court.—Ib. Decree absolute not opened on motion.—Marks v. Baker, 20 Fla., 920. Not set aside unless defendant vigilant.—Frisbee v. Timanus, 12 Fla., 300. Will not be set aside except upon a showing of diligence and meritorious defense.—Myers v. McGahagan, 26 Fla., 303; 8 So. Rep. 447; Taylor v. Brown, 32 Fla., 334; 13 So. Rep. 957. Improperly entered, should be set aside without costs.—Woodford v. Alexander, 35 Fla., 333; 17 So. Rep. 658.

1899. (1447.) Proceedings in lieu of decree pro confeso.—The complainant may, however, instead of causing a decree pro confesso to be entered, if he requires any discovery or answer to enable him to obtain a proper decree, have process of attachment against the defendant to compel an answer; and the defendant shall not, when arrested upon such process, be discharged therefrom unless upon filing his answer or otherwise complying with such order as the court may direct as to pleading to or fully answering the bill within a period to be fixed by the court, and undertaking to speed the cause. Ibid.

DECREES GENERALLY.

1900. (1448.) Signing and recording of. — Decrees in equity may be signed by the judge when pronounced and shall be recorded upon the minutes of the court without any other enrollment. And no process shall be issued or other proceedings had on any final decree or order until the same shall have been signed and recorded as aforesaid. Nov. 7, 1828, Sec. 28; Ch. 521, Sec. 8, Jan. 7, 1853.

Decree enrolled when entered.—Owens v. Love, 9 Fla., 325. Parties must have notice of entry of decree.—Broome v. Alston, 8 Fla., 307.

Lien of decree.—See Sections 1600 and 1601.

Decree of foreclosure is not a lien. Residuary decree is.—Scott v. Russ, 21 Fla., 260.

1901. (1450.) Execution of money decrees. — Executions on decrees for money shall issue as and be governed by the law relating to executions on judgments.

1902. (1451.) Effect of a decree for conveyance.—Where a decree in chancery shall be made for a conveyance, release, or acquittance of land, or any interest therein, and the party against whom the said decree shall pass shall not comply therewith by the time appointed, then such decree shall be considered and taken in all courts of law and equity to have the same operation and effect and to be as available as if the conveyance and release or acquittance had been executed conformably to such decree, and this notwithstanding any disability of such parties by infancy, lunacy, coverture, or otherwise.

Decrees Generally.—Cannot be attacked collaterally.—Mann v. Jennings, 25 Fla., 730; 6 So. Rep. 771. Form of decree for money.—May v. May, 19 Fla., 373.

Attorney's Fees.—When decree for erroneous.—Summer v. Mitchell, 29 Fla., 179; 10 So. Rep. 562; Price v. Bowden, 39 Fla., 218; 22 So. Rep. 657. When judge can hear evidence ex parte as to reasonableness of.—Trower v. Bernard, 37 Fla., 226; 20 So. Rep. 241.

Not error to render final upon default same day master's report is filed. —Price v. Bowden, 39 Fla., 218; 22 So. Rep. 657.

For deficiency after foreclosure sale only by rule of court.—Webber v. Blane, 30 Fla., 224; 22 So. Rep. 655. Erroneous if amount exceed allegations and prayer of the bill.—St. Johns etc., R. Co. v. Bartola, 28 Fla., 82; 9 So. Rep. 853; Post v. Roach, 26 Fla., 442; 7 So. Rep. 854.

May be modified to cover only issues raised by the pleadings.—Edwards v. Thom, 25 Fla., 22; 25 So. Rep. 707. For error found by Chancellor.—McLean v. Piaggio, 24 Fla., 71; 3 So. Rep. 823. Purchase at sale under erroneous by stranger not affected unless the decree be void.—Garvin v. Watkins, 29 Fla., 151; 10 So. Rep. 818. When specific relief can be had under general prayer.—Lee v. Patton, 34 Fla., 149; 15 So. Rep. 775.

ARTICLE 9.

PETITIONS FOR REHEARING.

Nov. 7, 1828. Sec. 29.

1903. (1452.) Form and contents of.—Every petition for a rehearing shall contain the special matter or cause on which such a rehearing is applied for, and the facts therein stated, if not appearing on the face of the proceedings, shall be verified by the oath of the party or some other credible person.

Ib.; Ch. 77, Sec. 5, Jan. 6, 1847.

1904. (1453.) Presentation of, as a supersedeas.—The presentation of a petition for rehearing presented within thirty days from the time of pronouncing the decree, shall stay all proceedings thereon for thirty days from such pre-

sentation. but for no longer unless bond be given by the petitioner, with good and sufficient sureties, as in cases of appeal, conditioned for the payment of all damages and costs which may accrue by such delay, the penalty of which shall be fixed by the judge of the court to whom said petition for rehearing may be presented. When such bond shall have been given, all proceedings shall be stayed until the petition shall have been heard and determined.

1905. (1454.) Granting of rehearing as a supersedeas. After a rehearing shall have been granted, no further or other proceedings shall be had or taken on the decree pronounced on the original hearing of the cause. Nov. 7, 1928, Sec. 29.

Modification of decree on rehearing.—McLane v. Piaggio Bros., 24 Fla., 71; 3 So. Rep. 823. Office of petition for rehearing considered and defined.—Finlayson v. Lipscomb, 15 Fla., 558. Not granted to correct decree.—White v. Walker, 5 Fla., 478.

ARTICLE 10.

APPEALS IN CHANCERY.

Matters of right. Section..... 1906
Limitation of time. Section..... 1907
From interlocutory decrees. Section..... 1908
As supersedeas. Sections.....1909-1910
Notice of appeal, how entered, etc. Section..... 1911
Certain general provisions. Section..... 1912

1906. (1455.) Matters of right.—Appeals in chancery shall be matters of right. Feb. 11, 1832, Sec. 1,

1907. (1456.) Limitation of time.—Appeals in chancery, whether from final decrees or from interlocutory orders or decrees, must be taken within six months after the entry of the order or decree appealed from. As amended by Sec. 1, Ch. 4130, Acts 1893.

This act not retroactive.—Sammis v. Bennett, 32 Fla., 458; 14 So. Rep. 90. Reference to master is not final decree.—Griffin v. Orman, 9 Fla., 22; Owens v. Love, 9 Fla., 325; Spencer v. Travelers Ins. Co., 39 Fla., 677; 23 So. Rep. 442; Fleming v. Fleming, 40 Fla., 154; 23 So. Rep. 571.

Certain matters reviewable at instance of appellee.—O'Neill v. Percival, 25 Fla., 118; 5 So. Rep. 809. Lies from order granting injunction and appointing receiver.—Cunningham v. Tucker, 14 Fla., 249. Does not lie from consent decretal order.—White v. Walker, 5 Fla., 478. Instance of interlocutory decree.—Bellamy v. Bellamy, 4 Fla., 242. Appeal from final decree opens whole case for review.—Garvin v. Watkins, 39 Fla., 151; 10 So. Rep. 18; Newbert v. Masman, 37 Fla., 91; 19 So. Rep. 625.

Upon appeal from interlocutory decree court is confined to the orders mentioned in the appeal.—Wiggins v. Williams, 36 Fla., 637; 18 So. Rep. 859.

When appellate court will disturb conclusion of Chancellor upon the facts.—Peck v. Osteen, 37 Fla., 427; 20 So. Rep. 549; Perez v. Bank, 36 Fla., 467 18 So. Rep. 590.

Upon reversal lower court must conform to direction of Supreme Court.—Bloxham v. Florida, etc., Co., 39 Fla., 243; 22 So. Rep. 697.

Appeal, dismissal of. For failure to file transcript.—Pontier v. Jeffare 25 Fla., 844; 6 So. Rep. 830; Long v. Herrick, 28 Fla., 755; 10 So. Rep. 17.

When not dismissed for such failure.—Lake v. Hancock, 29 Fla., 336; 11 So. Rep. 97.

When not dismissed for laches and irregularities.—Anderson v. Webster, 30 Fla., 220; 11 So. Rep. 546. When dismissed for want of equity in the bill.—Trustees v. Gleason, 39 Fla., 771; 23 So. Rep. 539.

1908. (1457.) From interlocutory decrees. — Appeals may be taken and prosecuted from any interlocutory order, decision, judgment or decree of the circuit courts of this State, when sitting as courts of equity; but the conferring of the right shall not be construed so as to deprive either party from deferring and postponing the entry of his appeal until after the entry of the final decree, or end of the cause as prescribed by law; nor shall such postponement of the appeal be decreed, held or taken to be an acquiescence in the propriety of any interlocutory order or decree made in the progress of the cause, or any waiver of any error therein.

Ch. 521, Sec. 3, Jan. 7, 1852; As amended by Ch. 4130, Acts 1893.

Certain matters reviewable at instance of appellee.—O'Neill v. Percival, 25 Fla., 118; 5 So. Rep. 809. Lies from order granting injunction and appointing receiver.—Cunningham v. Tucker, 14 Fla., 249. Does not lie from consent decretal order.—White v. Walker, 5 Fla., 478. Instance of interlocutory decree.—Bellamy v. Bellamy, 4 Fla., 242.

1909. (1458.) Appeal as a supersedeas.—No appeal from a final decree shall operate as a supersedeas unless said appeal be taken within the time fixed by law for taking a writ of error operating as of course as a supersedeas; or, if not taken within that time, unless one of the justices of the Supreme Court shall, by order, direct the said appeal to operate as a supersedeas. In any event bond and security shall be given as provided for in cases of writs of error. No supersedeas on an appeal from any such decree granting or dissolving an injunction shall have the effect to suspend or modify the decree appealed from unless the Supreme Court, or a justice thereof, shall make an order for the suspension or modification of the decree upon like terms and conditions as to bond and security.

Feb. 11, 1833, Sec. 1, As amended by Sub-Sec. 1, of Sec. 1, Ch. 4917, Acts 1901.

Supersedeas is, of course, only in case of a money decree. Others must be allowed by judge.—McGill v. McGill, 19 Fla., 341. Effect of supersedeas.—State v. Jacksonville, Pensacola and Mobile Railroad Co., 15 Fla., 201; Archer v. Hart, 5 Fla., 234. Supersedeas to order setting aside final decree.—Saxon v. Gamble, 23 Fla., 408; 2 So. Rep. 664. What considered on application for supersedeas.—Ib. Power of Supreme Court judge to grant.—Ib.

2. Supersedeas on Appeal from Interlocutory Orders, etc.—No appeal from any interlocutory decision, judgment or decree of a circuit court sitting as a court of equity shall operate as a supersedeas unless the judge of the circuit court or a justice of the Supreme Court shall, on an inspection of the record, order and direct a stay of proceedings. No appeal so allowed shall operate as a supersedeas, except on the conditions prescribed by law in cases of appeal from final decrees. No supersedeas on an appeal from any such decision, judgment or decree granting or dissolving an injunction shall have the effect to suspend or modify the decision, judgment or decree appealed from, unless the Supreme Court or a justice thereof shall make an order for the suspension or modification of the order appealed from during the pendency of the appeal on like terms as to bond and security.

Ch. 521, Secs. 3, 4, Jan. 7, 1853, As amended by Sub-Sec. of Sec. 1, Ch. 4917, Acts 1901.

To what extent inspection required.—Williams v. Hilton, 25 Fla., 608; 6 So. Rep. 452. Effect of supersedeas on preliminary injunction and appointment of receiver.—State v. Johnson, 13 Fla., 33. When action of judge approving supersedeas bond conclusive.—Tampa St. Ry. Co. v. Tampa, etc., Co., 30 Fla., 400; 11 So. Rep. 562. When supersedeas will be vacated.—Hardee v. Hutchinson, 31 Fla., 392; 12 So. Rep. 212. Compliance with terms. A supersedeas on an appeal from an order dissolving an injunction reinstates the injunction.—McMichael v. Eckman, 26 Fla., 43; 7 So. Rep. 365; Smith v. Whitfield, 38 Fla., 211; 20 So. Rep. 1012. Operative only after bond given.—Tampa, etc., Co. v. Tampa, etc., Co., 30 Fla., 400; 11 So. Rep. 562.

What consideration of the record necessary for judge to grant order of supersedeas.—Williams v. Hilton, 25 Fla., 608; 6 So. Rep. 452; Jacoby v. Shoemaker, 26 Fla., 502; 7 So. Rep. 555; Palmer v. Palmer, 41 Fla., 184; 26 So. Rep. 640. Vacated when does not affect interest of party obtaining.—Warner v. Watson, 27 Fla., 518; 8 So. Rep. 842. When irregular.—Ib. When unauthorized.—Stockton v. Harmon, 32 Fla., 312; 13 So. Rep. 833.

Where damages resulting therefrom are such that they can not be compensated in money supersedeas will not be granted.—Jacoby v. Shomaker, 26 Fla., 502; 7 So. Rep. 855. Where appeal not frivolous and damages are such as can be compensated in money.—Tampa, etc., Co. v. Tampa, etc., Co., 30 Fla., 400; 11 So. Rep. 908. Circumstances under which properly granted.—Hardee v. Hutchinson, 31 Fla., 392; 12 So. Rep. 212.

How bond should be conditioned.—Dell v. Marvin, 31 Fla., 152; 12 So. Rep. 216; McMichael v. Eckman, 26 Fla., 43; 7 So. Rep. 365.

Vacated if sureties upon bond are insufficient.—Hays v. Todd, 26 Fla., 214; 7 So. Rep. 851; or if they become insolvent.—Fla., etc., Co. v. Branham, 32 Fla., 289; 13 So. Rep. 281. Without prejudice if bond is uncertain in its terms.—Jackson v. Relf, 24 Fla., 198; 4 So. Rep. 534; McMichael v. Eckman, 26 Fla., 43; 17 So. Rep. 365.

SUFFICIENCY OF.

Non-resident owning no property in State not sufficient surety.—Poyntz v. Reynold, 37 Fla., 533; 19 So. Rep. 649. Bond insufficient if aggregation of liability only equals sum of bond.—Ib.

Bond is not necessary to perfect appeal.—Kilbee v. Myrick, 12 Fla., 416; Smith v. Curtis, 19 Fla., 786; Bauknight v. Sloan, 17 Fla., 821. Nor is bond

for costs.—Darden v. Lines, 2 Fla., 569. Sufficiency of amount and condition of bond.—Kilbee v. Myrick, 12 Fla., 416. Bond must identify decree.—Jackson v. Relf, 24 Fla., 198; 4 So. Rep. 534. But an amended bond may be filed.—Ib.

March 15, 1844, Sec. 2.

1910. (1459.) Supersedeas on appeals from decrees, etc. relating to administrators. — No appeal from any order judgment or decree of any court of chancery, probate or other court in this State, appointing or removing executors administrators or other personal representatives, or affirming such order, judgment or decree, shall operate as a supersedeas, or have the effect of placing or keeping the estate of any deceased person in the possession of the party appealing, unless such party enter into bond with two sufficient sureties, to be approved by the judge of the court, payable to the Governor of the State for the benefit of all concerned, in a sum at least equal to the value of such estate, conditioned for the payment of all costs and damages that may accrue to all persons whomsoever by reason of such appeal if the same should not be prosecuted with success.

Sec 1, Ch. 4528, Acts 1897.

1911. Notice of entry of appeals.—Notice of entry of all appeals in chancery causes, whether taken in open court or in vacation, shall be filed with the clerk of the court whose order or decree is to be reviewed, and by such clerk shall be forthwith entered in the chancery order book; and no other or further notice of such appeal shall be required to be given or served in order to give to the Supreme Court complete jurisdiction over the person of the appellee, but the record of such entry in the chancery order book shall be taken and held to be sufficient notice to the appellee of the taking of said appeal and of the pendency thereof in the Supreme Court.

When appeal taken during term of Supreme Court returnable.—Williams v. Hilton, 25 Fla., 608; 6 So. Rep. 452. Citation not waived by agreement of parties to use same transcript.—Pontier v. Jeffares, 25 Fla., 844; 6 So. Rep. 830. Not properly tested or served.—Illegal.—Joost v. Elliott, 20 Fla., 924.

This section does not change the time required to intervene between entry of appeal and return thereof.—Spencer v. Travelers' Ins. Co., 39 Fla., 677; 23 So. Rep. 442.

1912. Application to appeals in chancery, of certain provisions relating to writs of error.—The provisions of law relating to writs of error governing the filing of transcripts of record, and proceedings thereon, and filing assignments of errors, the duty of appellate court in examining the record and giving judgment, in causing execution of its decrees and in quashing writs of error, shall be applicable to appeals in chancery.

DECISIONS (NOT ELSEWHERE NOTED) UPON APPELLATE PROCEEDINGS IN CHANCERY.

When Appeal Lies.—From final decree upon decree pro confesso.—Trustees, etc., v. J. P. & M. R. R. Co., 16 Fla., 708; Freeman v. Timanus, 12 Fla., 393; Hart v. Stribling, 21 Fla., 136. What open upon such appeal.—Freeman v. Timanus, 12 Fla., 393.

When Appeal Does Not Lie.—From pro forma decree.—Darden v. Lines, 2 Fla., 569. From fine for contempt for violating injunction.—Caro v. Maxwell, 20 Fla., 17.

Parties to Appeal.—Receiver when his compensation is affected is proper party.—Herndon v. Hurter, 19 Fla., 397. Parties may be made by amendment in Supreme Court.—Whitlock v. Willard, 18 Fla., 156. A party not served with process below may appeal.—State v. J. P. & M. R. R. Co., 15 Fla., 201. Appeal by one of several parties.—summons and severance.—Whitlock v. Willard, 18 Fla., 156. An appeal not naming parties is insufficient.—Alston v. Rowles, 13 Fla., 110. Separate appeals should be taken from orders on distinct rules against sheriff.—Moseley v. Sheppard, 1 Fla., 156. Joint and several appeals.—Guarantee Trust Co., v. Buddington, 23 Fla., 514; 2 So. Rep. 885.

A party against whom no relief is granted and bill of complaint is dismissed cannot appeal.—Witt v. Baars 36 Fla., 119; 18 So. Rep. 330; Ballard v. Kennedy, 34 Fla., 483; 16 So. Rep. 327. All parties against whom a joint decree is rendered must unite in appeal.—Jacksonville, etc., Co. v. Broughton, 38 Fla., 139; 20 So. Rep. 829. But those aggrieved only as to their separate interests may enter separate appeals.—Ib. Clarkson v. Louderback, 36 Fla., 660; 19 So. Rep. 887.

Dismissal of Appeal.—For failure to file petition of appeal.—Hull v. Westcott, 17 Fla., 280.

Failure to give bond in proper time.—Brown v. Wheeler, etc., Co., 25 Fla., 361; 5 So. Rep. 673.

For failure to file transcript.—Williams v. La Penotiere, 25 Fla., 473; 6 So. Rep. 167.

Not dismissed if filed before motion made.—Lake v. Hancock, 29 Fla., 336; 11 So. Rep. 97.

For laches and abandonment.—Pontiere v. Jeffares, 25 Fla., 844; 6 So. Rep. 83; Long v. Herrick, 28 Fla., 755; 10 So. Rep. 17.

When granted without prejudice to rights of attorneys.—Atlantic, etc., Co. v. Kinsman, 29 Fla., 332; 10 So. Rep. 555.

Where bill makes no case in equity.—Trustees v. Gleason, 39 Fla. 771; 23 So. Rep. 539.—Fruitless appeal.—Broward v. Duval Athletic Club, 39 Fla., 751; 23 So. Rep. 48.

Presumptions in favor of court below.—Stephens v. Bradley, 24 Fla., 201; 3 So. Rep. 415; Livingston v. Cooper, 22 Fla., 292; Brown v. Harley, 2 Fla., 159. That all material evidence is in the record.—Hyer's extrs. v. Caro's extrs., 17 Fla., 332. When motion to dismiss will be denied.—Palmer v. Palmer, 28 Fla., 295; 9 So. Rep. 657.

Certiorari upon suggestion of diminution.—Caro v. Pensacola City Co., 19 Fla., 766.

What Appellate Court Will Consider.—Only orders appearing on the record.—Freeman v. Timanus, 12 Fla., 393. Appeals open what case.—Foster v. Ambler, 24 Fla., 519; 5 So. Rep. 263; Fairchild v. Knight, 18 Fla., 770; State v. J. P. & M. R. R. Co., 15 Fla., 201; Griffin v. Orman, 9 Fla., 22; So

Life Ins. Co. v. Cole. 4 Fla., 359; Le Baron v. Fauntleroy, 2 Fla., 276. case commenced before the code.—Hyer's extrs. v. Caro's extrs., 17 Fla., 33 On appeal from final decree upon decree pro confesso.—Freeman v. Timanus 12 Fla., 393.

Reversals. When Decree Reversed.—When proper parties absent.—Greeley v. Hendrix, 23 Fla., 336; 2 So. Rep. 620. Upon decree pro confesso when defendant not in default.—Eldridge v. Wightman, 20 Fla., 687. Prejudicial to both sides, reversed upon grounds not assigned.—Coy v. Downie 14 Fla., 544. For further evidence.—Fuller v. Fuller, 23 Fla., 236; 2 So. Rep 426. Because entered without process, notice, evidence, hearing or decree pro confesso.—State v. J. T. & M. R. R. Co., 15 Fla., 201. When Not Reversed.—When irreconcilably conflicting testimony.—Lewter v. Price, 25 Fla., 574; 6 So. Rep. 439; Eppinger v. Canepa, 20 Fla., 262. In case of injunction, unless error clear.—McKinne v. Dickenson, 24 Fla., 366; 5 So. Rep. 34. For error in interlocutory decree not carried into final decree.—Dzialynski v. Bank, 22 Fla., 247; 2 So. Rep. 696; Ballard v. Eckmann, 20 Fla., 661. Upon grounds waived or not insisted upon in the court below.—Eppinger v. Canepa, 20 Fla., 262; Sanderson v. Sanderson's admr., 20 Fla., 292; Hyer's extrs. v. Caro's extrs., 17 Fla., 332. For immaterial error.—Matthews v. Lindsey, 20 Fla., 962.

Form of Appeal.—Writ of error cannot take place of.—County Commissioners v. Bryson, 13 Fla., 286; Bradford v. Marvin, 2 Fla., 101; Harris v. Cole, 2 Fla., 400.

Extension of Time for Appeal.—Cannot be gained by appeal from motion to set aside decree.—Fitzpatrick v. Turner, 14 Fla., 382.

ARTICLE 11.

INJUNCTION PROCEEDINGS IN PARTICULAR CASES.

Injunctions. Sections 1913-1917
In particular cases. Sections.....1918-1920

INJUNCTIONS.

Nov. 7. 1828, Sec. 4.

1913. (1463.) Injunction to issue only after bill filed. No writ of injunction shall be granted until a bill praying therefor shall have been filed, except in the special cases in which, and for the special causes for which, such writs are authorized in the courts of the United States exercising equity jurisdiction.

Filing with judge sufficient.—Fairchild v. Knight 18 Fla., 770. Should not issue unless bill contains prayer.—Thompson v. Maxwell, 16 Fla., 773. Exception.—Ib.

Ib., Sec. 27.

1914. (1464.) Injunctions to stay proceedings at law. No writ of injunction to stay proceedings at law shall issue

except on motion to the court, and reasonable notice of such motion previously served on the opposite party or his attorney, nor unless the party applying therefor shall have previously paid all costs of the suit at law, and shall have entered into a bond with two or more sufficient sureties in a sum to be fixed by the court, payable to the plaintiff in the action at law, and conditioned, if the application be to stay the proceedings before verdict or inquest of damages, to pay to the plaintiff all damages, losses, expenses and charges which he may have sustained or have been put to by reason of the issuing of the said injunction if the injunction shall be dissolved, or if the bill upon which it was granted be dismissed; or if the application be to stay the proceedings after verdict or inquest of damages, to pay the debt, interest enjoined and such damages as may be occasioned by the wrongful issuing of said injunction, if the said injunction shall be dissolved, or the bill upon which it may be granted be dismissed.

What is not injunction to stay proceedings at law.—Lewter v. Hower, 18 Fla., 872. Should not issue without bond, except when.—Thompson v. Maxwell, 16 Fla., 773.

1915. (1465.) Injunction without bond.—In all suits in equity where summary process by injunction or otherwise shall be prayed, and the bill justifies such process, and affidavit shall be made of the truth of the statements of the bill, and that the complainant is unable to give bond of indemnity or other security, the chancellor shall receive from both parties evidence of the truth or falsity of the statements of the bill and of the accompanying affidavit, and if they shall appear to be true, shall grant such process without requiring such security. Ch. 1098, Sec. 1, Feb. 14, 1861.

Evidence required.—Swepson v. Call, 13 Fla., 337.

1916. (1466.) Evidence upon application for, or to dissolve injunctions.—Upon an application for an injunction or other summary order, or upon motion to dissolve the same, either party thereto shall have the right to introduce evidence, and the chancellor shall grant, dissolve or continue the order, or may require security, according to the weight of the evidence. Ib., Sec. 2.

Effect of this section.—Sullivan v. Moreno, 19 Fla., 200. Effect of filing answer upon such application.—Ib.

1917. (1467.) Motion to dissolve injunction. — The defendant, after injunction granted, may either before or after answer filed, on due notice being previously given to the op- Nov. 7, 1828, Sec. 4.

posite party or his solicitor, move the court for the dissolution of any injunction which may have been granted.

Dissolution of Injunctions. When Dissolved.—Without answer of all defendants.—Douglass v. County Commissioners, 23 Fla., 419; 2 So. Rep. 776. Effect of filing answer, denying equities.—Hayden v. Thrasher, 20 Fla., 715; Carter v. Bennett, 6 Fla., 214; Linton v. Denham, 6 Fla., 533. Not upon answer containing only denials upon belief.—Hunter v. Bradford, 3 Fla., 269. Or upon answer of admr. alleging ignorance.—Ib. Upon What Grounds Not to be Dissolved.—For want of next friend to a wife.—Fairchild v. Knight, 18 Fla., 770. Not of course because of absence of necessary party or presence of improper party.—Scarlett v. Hicks, 13 Fla., 314. For non-payment of costs or insufficient notice or insufficient bond for costs. Practice in such cases.—Gamble v. Campbell, 6 Fla., 347. Effect of delay upon application for dissolution.—Scarlett v. Hicks, 13 Fla., 314. Effect of dissolving injunction to stay proceedings at law.—Ib. Effect of dissolution on injunction bond. Forfeits bond.—Tallahassee R. R. Co. v. Hayward, 4 Fla., 411. Declaration.—Ib.

Dissolution.—Rule that all defendants should answer before has exceptions.—Douglas v. County of Baker, 23 Fla. 419; 2 So. Rep. 776.

When order of dissolution may be vacated and injunction reinstated.—Peck v. Spencer, 26 Fla., 23; 7 So. Rep. 642.

When dissolved for laches of complainant.—Perry v. Wittich, 37 Fla., 237; 20 So. Rep. 238.

Violation.—Advice of counsel no excuse for.—Continental, etc., Association v. Scott, 41 Fla., 421; 26 So. Rep. 726.

DECISIONS (NOT ELSEWHERE NOTED) AFFECTING INJUNCTION.

Power of Supreme Court to issue.—Cohen v. L'Engle, 24 Fla., 542; 5 So. Rep. 235. Showing to be made for issuance.—Should issue only on case verified by positive oath.—Ruge v. Apalachicola Company, 25 Fla., 656; 6 So. Rep. 489; Ballard v. Eckmann, 20 Fla., 661; Coxetter v. Huertas, 14 Fla., 270. Exception.—Cunningham v. Tucker, 14 Fla., 251. Requirement of affidavit by counsel.—Bowes v. Hoeg, 15 Fla., 403. What bill must contain.—Pensacola and Georgia Railroad Company v. Spratt, 12 Fla., 26. To restrain nuisance. Practice in such cases.—Thebault v. Canova, 11 Fla., 143 How title to property in bill to enjoin trespass to be stated.—Sullivan v. Moreno, 19 Fla., 200.

Granting of, and Requirements for Granting of, Injunction; Generally.—Must show irreparable injury.—Crawford v. Bradford, 23 Fla., 404; 2 So. Rep. 782. And must state facts.—Willingham v. King, 23 Fla., 478; 2 So. Rep. 851; Carney v. Hadley, 32 Fla., 344; 14 So. Rep. 4; Fuller v. Cason, 26 Fla., 476; 7 So. Rep. 870. When answer is responsive denying allegations of bill court must be governed by the evidence.—Campbell v. White, 39 Fla., 745; 23 So. Rep. 555.

When bill for demurrable.—Adams v. White, 23 Fla., 552; 2 So. Rep. 774. Bill dismissed at hearing for preliminary injunction.—Sauls v. Freeman, 24 Fla., 409; 4 So. Rep. 525.

Practice of granting temporary restraining order without bond pending application for injunction contrary to policy of our statute.—Stockton v. Harmon, 32 Fla., 312; 13 So. Rep. 833. Purpose of injunction.—Pensacola and Georgia Railroad Company v. Spratt, 12 Fla., 26.

In Particular Instances.—Against nuisances.—Shivery v. Streeper, 24 Fla., 103; 3 So. Rep. 865. To enjoin execution and judgment must identify judgment.—Adams v. White, 23 Fla., 352; 2 So. Rep. 774. Against judgment obtained without service of process.—Purviance v. Edwards, 17 Fla., 140. When lies against judgment at law.—Dibble v. Truluck, 12 Fla., 185; Baltzell v. Randolph, 9 Fla., 366; Gamble v. Campbell, 6 Fla., 347. By party in possession to restrain dispossession by process to which he is not a party.—Deans v. Bowden, 20 Fla., 905. To remove building from street.—Lutterloh v. Mayor, 15 Fla., 306. Against nuisance in street.—Alden v. Pinney, 12 Fla., 348. In case of waste. In case of lien.—P. & G. R. R. Co. v. Spratt, 12 Fla., 26. Insolvency as ground for.—Ib.

Granting, sufficient allegation for.—Indian River, etc., Co. v. East Coast Co., 28 Fla., 387, 10 So. Rep. 480. To restrain sale of exempt property may issue without bond.—Smith v. Gufford, 36 Fla., 481; 18 So. Rep. 717. McMichael v. Grady, 24 Fla., 219; 15 So. Rep. 765. Cutting and removing trees, etc., from land.—Reddick v. Meffert, 32 Fla., 409; 13 So. Rep. 894. Actual possession not essential.—Ib.

Injury to soil. Removing phosphate rock.—Brown v. Solary, 37 Fla., 102; 19 So. Rep. 161. Disapproving.—Woodford v. Alexander, 35 Fla., 333; 17 So. Rep. 358.

Sale of vessel for illegal taxes.—Johnson v. Debary, 37 Fla., 499; 19 So. Rep. 460. To restrain mortgagor from selling mortgaged goods.—Logan v. Slade, 28 Fla., 69; 10 So. Rep. 25. Trespass on lands.—Wiggins v. Williams, 36 Fla., 637; 18 So. Rep. 859.

Power of county commissioners to grant.—McMichael v. Grady, 34 Fla., 219; 15 So. Rep. 765.

Injunction Refused; Generally.—To prevent accomplished fact.—Smith v. Davis, 22 Fla., 405. To non-vigilant applicant.—County Commissioners v. Bryson, 13 Fla., 281. To take place of appellate proceedings.—Budd v. Long, 13 Fla., 288. Or of a writ of prohibition.—Kahn v. Kahn, 15 Fla., 400. Or to stay mandamus proceedings.—County Commissioners v. Bryson, 13 Fla., 281; Finnegan v. Mayor, 18 Fla., 127. If bill shows right to be barred.—Apalachicola v. Curtis, 9 Fla., 343. Refused.—Cohen v. L'Engle, 29 Fla., 579; 11 So. Rep. 47. Supreme Court will refuse.—Ib.; McKinne v. Board of Commissioners, 26 Fla., 267; 4 So. Rep. 855. For a speculative or doubtful injury.—Ruge v. Apalachicola, etc., Co., 25 Fla., 656; 6 So. Rep. 489. Against prosecuting an action of ejectment.—Byrne v. Brown, 40 Fla., 109; 23 So. Rep. 877. For enforcing payment for building railroad across property.—Florida, etc., Co. v. Hill, 40 Fla., 1; 23 So. Rep. 566. Restraining county commissioners in the performance of offical duties.—Mendenhall v. Denham, 35 Fla., 250; 17 So. Rep. 551. To restrain slander of title.—Reyes v. Middleton, 36 Fla., 99; 17 So. Rep. 937. At the instance of a mortgagee to enjoin sale of mortgaged property upon a junior judgment.—American, etc., Co. v. Maxwell, 39 Fla., 489; 22 So. Rep. 751. Does not lie to test legality of municipal corporation.—Bateman v. Florida Commercial Co., 26 Fla., 423; 8 So. Rep. 51. But lies at instance of tax-payer to prevent illegal disposition of public monies.—Peck v. Spencer, 26 Fla., 23; 7 So. Rep. 642.

In Particular Instances.—Against usurpation of office.—McDonald v. Rehrer, 22 Fla. 198. To settle priorities of executions and attachments.—McKeown v. Coogler, 18 Fla., 866. Against threatened levy by tax collector on personal property.—Baldwin v. Tucker, 16 Fla., 258. To enforce set off against tax.—Finnegan v. Fernandina, 15 Fla., 379. To enjoin sale for taxes because of irregularities in notice and time and place of sale.—Ib. To enjoin tax on ground of irregularity or excessiveness of amount.—King v. Gwynne, 14 Fla., 32. Against sheriff for trespass upon or withholding of

personal property.—Davidson v. Floyd, 15 Fla., 667. In case of simple trespass to property.—Burns v. Sanderson, 13 Fla., 381. To prevent an appeal.—State v. J. P. & M. R. R. Co., 15 Fla., 201. Against board of election canvassers, when.—Bloxham v. Gibbs, 13 Fla., 55. To obviate effect of supersedeas in divorce cases.—Burns v. Sanderson, 13 Fla., 381. To negligent party, against decree.—Apalachicola v. Curtis, 9 Fla., 343.

Injunction bond.—Counsel's fees recoverable as damages in suit on.—Wittich v. O'Neill, 22 Fla., 592. Forfeiture by dissolution of injunction.—Tallahassee R. R. Co. v. Haywood, 4 Fla., 411.

At what time to be granted.—Either before or after answer.—Wordehoff v. Evans, 18 Fla., 339. Before service of subpoena.—Thebaut v. Canova, 11 Fla., 143. Notice of application for.—Not required in case of emergency, etc.—Lewter v. Hower, 18 Fla., 872. When and where not required.—Swepson v. Call, 13 Fla., 337; Thebaut v. Canova, 11 Fla., 143; Allen v. Hawley, 6 Fla., 142.

Notice of issuance.—May be served by sheriff other than of circuit in which granted.—Thebaut v. Canova, 11 Fla., 143. Operative upon defendant with knowledge of it but without service.—Ib.

What points will be considered on.—Application for.—Apalachicola v. Curtis, 9 Fla., 343. On application made after answer.—Yonge v. McCormick, 6 Fla., 363. Upon appeal. Order granting an injunction not reversed unless it is clear Chancellor has erred.—McKinne v. Dickenson, 24 Fla., 366; 5 So. Rep. 34.

Effect as lis pendens upon purchaser.—Hayden v. Thrasher, 28 Fla., 162; 9 So. Rep. 855.

INJUNCTIONS IN PARTICULAR CASES.

Against levy of execution issued against another than the complainant. Section 1918
Against destruction of timber. Section 1919
Against removal of mortgaged property. Section 1920

Ch. 3432, Sec. 1, Feb. 12, 1883.

1918. (1468.) Against levy of execution issued against another than the complainant. — Whenever real estate in this State belonging to any person, natural or artificial, shall be levied upon, or attempted to be sold under any writ of fieri facias or other legal process issued upon any judgment, decree or order against another person, or shall be attempted to be sold as the property of another person, the courts of equity of this State shall have jurisdiction to restrain and enjoin such attempted sale on the application of such owner in possession of such real estate, or the legal representatives of such owner.

Bill to remove cloud from title must show title in complainant.—Benner v. Kendall, 21 Fla., 584. And possession.—Bevill v. Smith, 25 Fla., 209; 6 So. Rep. 62. What possession necessary.—Sloan v. Sloan, 25 Fla., 53; 5 So. Rep. 603; Conant v. Buesing, 23 Fla., 559; 2 So. Rep. 882. Cloud defined.—Benner v. Kendall, 21 Fla., 584; Stewart v. Stewart, 19 Fla., 846; Davidson v.

Seegar, 15 Fla., 671; Lewter v. Hower, 18 Fla., 872; Sanford v. Cloud, 17 Fla., 557; Budd v. Long, 13 Fla., 288.

1919. (1469.) Against destruction of timber.—Courts of chancery shall entertain suits by any person claiming to own any timbered lands in this State to enjoin trespass on such lands by the cutting of trees thereon, or the removing of logs therefrom, or by boxing or scraping the said trees for the purpose of making turpentine, or by the removal of turpentine therefrom; and in such suits the said courts shall cause an account to be taken of the damage to the complainant from any of the said trespasses, before or after the institution of the suit, and decree the payment of the amounts shown to be due upon such accounting by the defendant or defendants, and may appoint receivers of logs or timber claimed to have been cut from said lands. Ch. 3884, Sec. 2, Jan. 4, 1889.

In order to recover in actions of trespass plaintiff must show that he was the owner or was in possession of the land when the trespass was done.—Yellow River R. R. Co. v. Harris, 35 Fla., 385; 17 So. Rep. 568.

(Injunctions in exemption matters: See Sections 2526-2528.) Sec. 1470.

1920. (1472.) Injunction against removal of mortgaged personal property.—Upon application of the mortgagee or his assigns, the removal from the State of any personal property mortgaged to secure a debt not matured at the time of the application, may be enjoined by any court of chancery within the territorial jurisdiction of which such property may be.

ARTICLE 12.

WRIT OF NE EXEAT.

1921. (1473.) When to issue.—No writ of ne exeat shall be granted until a bill sworn or supported by affidavit be filed, praying for such writ, except in the special cases and for the special causes in which said writs are authorized by the practice of the courts of the United States exercising equity jurisdiction. It may issue in any case where the court of chancery shall have concurrent jurisdiction with a court of common law, and where the issuance shall seem to the chancellor just. Nov. 7, 1828, Secs. 1, 2.

1922. (1474.) Chancellor to fix penalty of bond.—In granting such writ the chancellor shall fix the penalty and Ib., Sec. 2.

conditions of the bond to be required of the complainant, to defendant, with two good and sufficient sureties to be approved by the court, and no such writ shall issue until such bond shall be given by the complainant.

Ib., Sec. 3.

1923. (1475.) Absence of defendant permitted.—An absence of the defendant from the State, from which he shall return before a personal appearance shall be necessary by any decree of the court, or before it shall be necessary to perform any order of the court, shall not be considered a breach of the condition of the bond.

Ib., Sec. 4.

1924. (1476.) Surrender of defendant by bail. — The sureties (or either of them) of the defendant shall have power personally or by attorney, at any time before the bond shall be forfeited, to take the body of the principal and surrender him in open court, or deliver him to the ministerial officer of the court in which the suit is pending, who shall detain said principal as in cases of the surrender of the principal by special bail; and at the time of such delivery to the aforesaid officer, the surety shall take a receipt for the body and file it with the clerk of the court, either of which, if done before the bond is forfeited, shall discharge the sureties from their undertaking.

ARTICLE 13.

DIVORCE, ALIMONY AND CARE OF CHILDREN.

Divorce. Sections.....1925-1930
Alimony. Sections.....1931-1937
Care of children. Section.....1938

DIVORCE.

Oct. 31, 1828, Sec. 1.

1925. (1477.) To be sought by bill in chancery.—Suits for divorce shall in all cases be by bill in equity.

Ch. 522, Sec. 1, Jan. 8, 1853, As amended by Sec. 1, Ch. 4726, Acts 1899.

1926. (1478.) Residence required.—In order to obtain a divorce the complainant must have resided two years in the State of Florida before the filing of the bill, except where the defendant has been guilty of the act of adultery in this State, then any citizen of this State may obtain divorce at any time, and the two years' residence shall not be required of such complainant.

Sufficiency of allegation of residence.—Burns v. Burns, 13 Fla., 369. Allegation and proof of, essential.—Phelan v. Phelan, 12 Fla., 449.

1927. (1479.) All divorces to be a vinculo.—No divorce shall be from bed and board, but every divorce shall be from bonds of matrimony. Feb. 14, 1835, Sec. 3.

1928. (1480.) Grounds for.—No divorce shall be granted unless one of the following facts shall appear: Oct. 31, 1828, Secs. 3, 4, 5.

1. That the parties are within the degrees prohibited by law. Feb. 14, 1835 Sec. 2.

2. That the defendant is naturally impotent.

3. That the defendant has been guilty of adultery.

If it shall appear to the court that the adultery complained of was occasioned by collusion of the parties, and done with the intention to procure a divorce, or that both parties have been guilty of adultery, no divorce shall be decreed. Ch. 134, Sec. 1,

4. Extreme cruelty by defendant to complainant.

Sufficiency of allegation of extreme cruelty.—Burns v. Burns, 18 Fla., 369; Donald v. Donald, 21 Fla., 571. Extreme cruelty defined.—Williams v. Williams, 23 Fla., 324; 2 So. Rep. 768. Effect of subsequent unkindness.—Ib.

5. Habitual indulgence by defendant in violent and ungovernable temper. Jan. 5, 1837.

What allegations necessary.—Johnson v. Johnson, 23 Fla., 413; 2 So. Rep. 834; Burns v. Burns, 13 Fla., 369. What does not constitute.—Crawford v. Crawford, 17 Fla., 180.

6. Habitual intemperance of defendant.

Defined.—McGill v. McGill, 19 Fla., 341. Sufficiency of allegation of.—Burns v. Burns, 13 Fla., 369.

7. Willful, obstinate and continued desertion of complainant by defendant for one year.

Intention to desert necessary.—Crawford v. Crawford, 17 Fla., 180.

8. That the defendant has obtained a divorce from the complainant in any other State or country.

9. That either party had a husband or wife living at the time of the marriage sought to be annulled.

Divorce.—Bill must allege and proof must show two years' residence of complainant.—Greedler v. Greedler, 36 Fla., 372; 18 So. Rep. 762.

1929. (1481.) Effect of decree of divorce.—No decree of divorce shall render illegitimate the children born during the marriage, except when it is rendered upon the ground set forth in paragraph 9 of Section 1928, in which case the marriage shall be invalid from the beginning and the issue illegitimate, and subject to all the legal disabilities of such issue. Oct. 31, 1828. Sec. 4.

Effect of divorce upon separate property of wife.—McGill v. McGill, 19 Fla., 341.

1930. (1482.) Proceedings against non-resident defendants.—Bills for divorce may be brought against defendants residing out of the State, and service shall be effected upon them as in other cases in chancery, except in cases of incurable insanity as stated.

Miscellaneous Matters Concerning Divorce.—Evidence of marriage in divorce proceedings.—Burns v. Burns, 13 Fla., 369. Divorce cannot be granted by consent of parties. Underwood v. Underwood, 12 Fla., 432. Cannot be granted by legislature.—Ponder v. Graham, 4 Fla., 23. When appeal in supersedeas.—McGill v. McGill, 19 Fla., 341. Setting aside fraudulent divorces.—Rawlins v. Rawlins, 18 Fla., 345; Shrader v. Shrader, 36 Fla., 502; 18 So. Rep. 672.

ALIMONY.

1931. (1483.) Alimony pendente lite.—In every suit by a wife for a divorce founded upon any of the grounds mentioned in Section 1928, she may in the bill for divorce, or by petition, claim alimony and suit money, and, if the bill seems well founded, the court shall allow a reasonable sum therefor. Or if a wife defendant in any suit for divorce shall in her answer, or by petition, claim alimony or suit money, and the answer or petition shall seem well founded, the court shall allow a reasonable sum therefor.

Ch. 3581, Secs. 1, 2, Feb. 14, 1885.

Alimony.—The only foundation for alimony, suit money and counsel fees pendente lite is marriage between the parties.—Banks v. Banks, 42 Fla., 362; 29 So. Rep. 318. When the marriage is denied or not shown the court is not justified in making order for alimony.—Ib.

Alimony pendente defined; granting of and suit money; notice to husband.—Sanchez v. Sanchez, 21 Fla., 346. Alimony not of right.—Underwood v. Underwood, 12 Fla., 432. When granted after divorce.—Ib. Only granted when bill makes prima facie case for divorce.—Phelan v. Phelan, 12 Fla., 449. As affected by income of wife.—Chaires v. Chaires, 10 Fla., 308.

1932. (1484.) Alimony upon decree of divorce.—In every decree of divorce in a suit by the wife, the court shall make such orders touching the maintenance, alimony and suit money of the wife, or any allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife.

Oct. 31, 1828, Sec. 7.

Oct. 31, 1828, Sec. 12.

1933. (1485.) Alimony unconnected with divorce.—If any of the causes of divorce set forth in Section 1928 shall exist in favor of the wife and she be living apart from her husband, she may obtain alimony without seeking a divorce upon bill filed and suit prosecuted as in other chancery causes; and the court shall have power to grant such temporary and permanent alimony and suit money as the cir-

Ch. 3581, Secs. 1, 2. Feb. 14, 1885.

cumstances of the parties may render just; but no alimony shall be granted to an adulterous wife.

1934. (1486.) Alimony unconnected with causes of divorce.—If any husband having ability to maintain or contribute to the maintenance of his wife or minor children shall fail to do so, the wife, living with him, or living apart from him through his fault, may obtain such maintenance or contribution upon bill filed and suit prosecuted as in other chancery causes; and the court shall make such orders as may be necessary to secure to her such maintenance or contribution.

1935. (1487.) Effect of decree of alimony.—A decree of alimony granted under Sections 1932 and 1933 shall release the wife from the control of her husband, and she may use her alimony, and acquire, use and dispose of other property, uncontrolled by her husband; and when the husband is about to remove himself or his property out of the State, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against him on his property, and make such order or decree as will secure the wife's alimony to her. Oct. 31, 1828, Sec. 13.

1936. (1488.) Proceedings against absent defendants in suits for alimony.—Proceedings against absent defendants in suits for alimony shall be the same as in other chancery causes.

Permanent alimony not grantable in gross sum or in specific part of husband's estate.—Phelan v. Phelan, 12 Fla., 449. Must be based on proof.—Ib. Largely in discretion of lower court.—Chaires v. Chaires, 10 Fla., 308. May be additional to income of wife.—Ib.

1937. Attachment or garnishment of amounts due public officers in suits for alimony and divorce.—All moneys or other things due to any person or public officer, state or county, whether the head of a family or not, residing in this State when the money or other thing is due for the personal labor or service of such person or otherwise, shall be subject to attachment or garnishment to enforce the orders or decrees of the courts of this State for alimony, suit money or support, or other orders or decrees made by the courts of this State in suits for divorce or alimony; and in such cases where the money or other thing sought to be attached or delayed is the salary of a public officer, State or county, the writ of attachment or garnishment may be served upon the public officer whose duty it is to pay such salary, who shall respect and obey the same as provided by law in other cases; and it shall be the duty of such officer immediately upon receipt of such writ, to notify the public officer whose Sec. 1, Ch. 4978, Acts 1901.

duty it is to audit or issue a warrant for the salary sought to be attached or delayed, of the service of such writ, and such officer shall not issue a warrant for such salary until such case shall be settled or determined, and then in accordance therewith.

Various Decisions Upon Divorce and Alimony Not Elsewhere Noted.—When will be refused upon ground of extreme cruelty.—What constitutes.—Palmer v. Palmer, 26 Fla., 215; 7 So. Rep. 864. Mental injury constitutes.—Williams v. Williams, 23 Fla., 324; 2 So. Rep. 768. How violent and ungovernable temper must be alleged.—Johnson v. Johnson, 23 Fla., 413; 2 So. Rep. 834; Palmer v. Palmer, 36 Fla., 385; 18 So. Rep. 720; Dean v. Dean, 36 Fla., 492; 18 So. Rep. 592.

Desertion.—What is essential to constitute.—Palmer v. Palmer, 36 Fla., 385; 18 So. Rep. 720.

Service by Publication.—What is essential to jurisdiction of court.—Shrader v. Shrader, 36 Fla., 502; 18 So. Rep. 672.

Alimony.—A wife who has abundant means of her own not entitled to.—Haddon v. Haddon, 3 Fla., 413; 18 So. Rep. 779.

Court has power to grant in a suit by a putative husband to annul the marriage.—Prine v. Prine, 36 Fla., 676, 18 So. Rep. 781.

To maintain bill for alimony without divorce two-years' residence must be alleged and proven.—Miller v. Miller, 33 Fla., 453; 15 So. Rep. 222. Donnelly v. Donnelly, 39 Fla., 229; 22 So. Rep. 648.

CARE, CUSTODY AND MAINTENANCE OF THE CHILDREN.

Ib., Sec. 7.

1938. (1489.) Power of court in making orders.—In any suit for divorce or alimony, the court shall have power at any stage of the cause to make such orders touching the care, custody and maintenance of the children of the marriage, and what, if any, security to be given for the same, as from the circumstances of the parties and the nature of the case may be fit, equitable and just, and such order touching their custody as their best spiritual as well as other interests may require.

Circumstances of parents as affecting custody.—Williams v. Williams, 23 Fla., 324; 2 So. Rep. 768. Custody discussed.—McGill v. McGill, 19 Fla., 341.

ARTICLE 14.

PARTITION OF PROPERTY, REAL AND PERSONAL.

Partition of real property. Sections.....1939-1946
Partition of personal property. Section 1947

PARTITION OF REAL PROPERTY.

To be by bill in chancery. Section....1939
Locality of actions. Section....1940
Parties to suit. Section....1941
Form and contents of bill. Section....1942
Decrees. Section....1943
Commissioners to make partition. Section....1944
Sale of non-divisible property. Section....1945
Costs. Section....1946

1939. (1490.) To be by bill in chancery.—Suits for a partition of real estate shall in all cases be by bill in chancery, and all proceedings, except when herein otherwise provided, shall be as in other cases in chancery. Mch. 14, 1844. Sec. 1.

Cross-bill for partition in foreclosure suit not sustained.—Mathews v. Lindsay, 20 Fla., 962.

1940. (1491.) Locality of action.—Suits for partition shall be brought in the county where the lands which are the subject matter of the suit lie; but if the lands lie in more than one county, the suit may be brought in either county, in which case the decrees shall be recorded in every county in which any part of the lands lie. Ibid.

1941. (1492.) Parties to the suit.—Such bill may be filed by any one or more of several joint tenants, tenants in common or coparceners, against their co-tenants, coparceners or others interested in the lands to be divided. Ib., Sec. 2.

Admr. cannot maintain.—Greely v. Hendrix, 23 Fla., 306. Whitlock v. Willard, 18 Fla., 156. Service of infant defendant must precede appointment of guardian ad litem.—Brock v. Doyle, 188 Fla., 172.

1942. (1493.) Form and contents of the bill.—Such bill must be sworn to by one or more of the complainants and shall set forth a description of the lands or premises of which partition is prayed, by metes and bounds or other sufficient description, and shall state according to the best of the knowledge and belief of the complainants the names and places of residence of the several owners, joint tenants, tenants in common or coparceners, or other persons interested in said lands or real estate, the quantity or proportionate share held by each, and such other matters, if any, as may be necessary to enable the court to adjudicate fully upon the rights and interests of the parties. But if the names, residence, quantity of interest or proportionate share of any of the owners or claimants of such lands are unknown to the complainants, then it shall be so stated in such bill, and such suit may proceed in the same manner as though such unknown persons or defenadnts were named in the bill. Ibid.

Sufficient allegation of possession by co-tenants.—Keil v. West, 21 Fla., 508.

Ib., Sec. 4.

1943. (1494.) Decree of partition.—Upon application for entry of a final decree, made after a decree pro confesso, or after litigation of the cause, the court shall proceed to ascertain and adjudicate the rights and interests of the parties, either by a reference to a master, by a hearing upon the pleadings and proof, or in such other way or manner as may be most convenient and according to the ordinary rules and practice of the court; and shall also decree that partition be made if it shall appear that the parties are entitled to the same. When the rights and interests or proportions of the complainants are clearly established to the satisfaction of the court, or are undisputed, the court may, by decree, order partition to be made, and the shares, proportions or interests of the complainant or complainants, and such of the defendants as have established and satisfactorily proved their respective shares, interests or proportions, to be set off and allotted to them, leaving for future adjustment (by further proceedings in the same cause) the rights, shares and interests of the other defendants.

What court may consider in partition.—Boley v. Skinner, 38 Fla., 291; 20 So. Rep. 1017. Court must ascertain and adjudicate interest. Commissioners cannot.—Street v. Benner, 20 Fla., 700. Decree grantable only after answer or decree pro confesso.—Ib. Decree may adjudicate legal title.—Ib.

1944. (1493.) Commissioners to make partition.—

Ib., Secs. 5, 7.

1. Appointment and Removal.—Upon a decree of partition being made, the court shall appoint three suitable persons to act as commissioners in making the partition decree, who shall be selected by the court, unless agreed upon by the parties. They may be removed by the court, upon good cause to be shown, and others appointed in their place.

Ib., Sec. 8.

2. Powers, Duties, Compensation and Report of Commissioners.—Such commissioners shall, before entering upon their duties, be sworn by the clerk of the court, or by any judicial officer, faithfully and impartially to execute the trust imposed in them; shall have power to employ a surveyor or surveyors, if necessary, for the purpose of making such partition; shall be allowed such sum as may be deemed reasonable by the court for their services, not exceeding, however, three dollars per day for every day actually employed; shall proceed to make partition of the premises in question according to the order of the court, and having made such partition, shall report the same in writing to the court without delay.

Ib., Sec. 6.

3. Exceptions to Report, and Final Decree.—Any party in interest may file objections or exceptions to the report of the commissioners within ten days after he shall be notified of the filing of the same; or if he is absent from the State so

that notice cannot be given, within thirty days after the same is filed; if no objections or exceptions are filed as aforesaid, or if the court is satisfied, upon the hearing of any such objections or exceptions, that they are not well founded, then the report shall be confirmed, and a final decree shall be entered up, which shall accordingly vest in the respective parties the title to the several parcels or portions of the premises allotted to them respectively, and shall give to each of them the possession of and quiet title to their respective shares as against the other parties to the suit, or those claiming through or under them.

Shares assigned need not be equal.—Brock v. Doyle, 18 Fla., 172. Assignment largely in discretion of chancellor.—Bird v. Bird, 15 Fla., 424.

1945. (1496.) Sale of non-divisible real estate.—

1. The Order of Sale.—If the commissioners shall report to the court that the lands, tenements or hereditaments of which partition shall have been directed are so situated that a partition thereof cannot be made without great prejudice to the owners of the same, and if the court shall be satisfied that such report is just and correct, the court may thereupon, upon application of either party, upon notice to the others before the court, if said others be in the State, order the premises so situated to be sold at public auction to the highest bidder, by and under the direction of the said commissioners, and the moneys arising from such sale to be paid into the court, to be divided among the respective parties interested in proportion to their shares or interest. Ib., Sec. 8.

2. Conditions of Sale.—For good cause to be shown, the court may order such sale to be made upon a reasonable credit for part or all of the purchase money, but in all cases at least 1-3 of the purchase money shall be paid down, unless all parties consent to a credit for a whole; and in all cases the purchase money not paid down shall be secured by bond and mortgage on the premises, and such other additional security as the court shall direct. Ib., Sec. 9.

3. Confirmation of Sale and Conveyance.—Such sale must have been reported to the court, and the money arising therefrom paid into the court, and the sale approved by the court and a conveyance ordered, before any conveyance in pursuance of such sale shall be made by the commissioners. Ib., Sec. 10.

1946. (1497.) Costs of partition and taxes.—Every party in interest, whether complainant or respondent, shall, by decree of the court, be bound to pay a share of the costs and charges, including attorney's fees of complainants' solicitor, Ib., Sec. 11 and Sec. 1, Ch. 4545, Acts 1897.

arising from the suit for the partition or sale of the land, in proportion to his interest; and such decree shall be binding on all his goods and chattels, lands or tenements; and in case of sale the court may order the same to be paid or retained out of the moneys arising from such sale and due or belonging to the parties who ought to pay the same. All taxes, state, county and municipal, due thereon at the time of such sale shall be paid out of the purchase money.

Miscellaneous Matters Concerning Partition of Real Estate.—Writ of assistance in.—Keil v. West, 21 Fla., 508. Seizin necessary in. Reference to master.—Ib. Cannot be decreed in foreclosure suit. Buckmaster v. Kelly, 15 Fla., 180. Rents and profits or compensation for use and occupation cannot be recovered in.—Mattair v. Payne, 15 Fla., 682. Nor partition had of premises held adversely, nor title tried in partition suit.—Ib.

By act of parties how made, and effect of.—Simmons v. Spratt, 22 Fla., 370; 1 So. Rep. 860. Same v. Same, 26 Fla., 449; 8 So. Rep. 123. Not a substitute for an action of ejectment.—Rivers v. Simmons, 33 Fla., 539; 15 So. Rep. 319. Not made until all defendants have answered or have decrees pro confesso entered against them.—Benner v. Street, 32 Fla., 274; 13 So. Rep. 407; Ropes v. McCabe, 40 Fla., 388; 25 So. Rep. 273.

Executor not a proper party.—Neilson v. Haisley, 39 Fla., 145; 22 So. Rep. 265; Lyon v. Register, 36 Fla., 273; 18 So. Rep. 589. Heirs of deceased cotenant are.—Ib. Administrator not a proper party.—Terrill v. Weymouth, 32 Fla., 255; 13 So. Rep. 429; Whitlock v. Miller, 18 Fla., 156.

What considered.—Boley v. Skinner, 38 Fla., 291; 20 So. Rep. 1017. Right of trial by jury is waived, when.—Rivas v. Simmons, 33 Fla., 539; 15 So. Rep. 319.

Service.—How made upon minors.—Terrell v. Weymouth, 32 Fla., 255; 13 So. Rep. 429. Non-resident defendant.—Benner v. Street, 32 Fla., 274; 13 So. Rep. 407.

PARTITION OF PERSONAL PROPERTY.

Sec. 1498, Rev. Stat., 1892.

1947. (1498.) Provisions of law applicable to.—All the provisions of law applicable to partition and sale for partition of real estate, and the proceedings therefor, shall be applicable to the partition and sale for partition of personal property and the proceedings therefor, as far as the nature of the property will permit.

(Process by publication: See Chapter 5393, Appendix.)

ARTICLE 15.

EQUITABLE GARNISHMENT.

Feb. 13, 1882, Sec. 1.

1948. (1499.) Proceedings prescribed.—If any suit shall be commenced for relief in equity in any court against any

defendant residing out of this State, and any other defendant within the same having in his hands effects of, or being otherwise indebted to, such absent defendant, and the appearance of such absentee be not entered and security given to the satisfaction of the court for performing the decree, upon affidavit that such defendant is out of the State, or that upon inquiry at his usual place of abode he cannot be found so as to be served with process, the court may make an order and require surety, if it shall appear necessary, to restrain the defendant in this State from paying or conveying away, or secreting the debts by him owing to, or the effects in his hands, of such absent defendants, or to restrain the absent defendant from conveying away or secreting or removing the property in litigation, or make an order sequestrating the property which may be necessary to secure the plaintiff if he finally succeeds; and may order such debts to be paid, and effects to be delivered up to said plaintiff, upon his giving sufficient security for the return thereof.

Service upon the absent defendant shall be had in the manner provided by law, and if the defendant does not appear and answer, plead or demur to the bill, decrees pro confesso and final decree may be entered as in other cases; and the court shall make an order requiring the complainant to give security, to be approved by the court or by its clerk, for abiding such future orders as may be made for restoring the estate or effects to the absent defendant upon his appearance and answering the bill; and if the complainant shall refuse to give or not be able to procure such security, the effects shall remain under the direction of the court, in the hands of a receiver, or otherwise, for so long a time, and shall be finally disposed of in such manner, as to the court shall seem fit. Ib., Sec. 2.

ARTICLE 16.

AVOIDANCE OF MULTIPLICITY OF SUITS IN LAND MATTERS.

1949. (1500.) Jurisdiction conferred.—Courts of chancery in this State shall entertain suits by any person or corporation claiming to own any tract or parcel of land or portions thereof, or by two or more claiming to own the same tract or parcel of land or portion thereof, under a common title against all persons or corporations more than one, occupying or claiming title to said tract or portions thereof adversely to the complainant or complainants, whether the de- Ch. 3884, Acts 1889, Sec. 1.

fendants claim or hold under a common title or not; and in such suits shall determine the title of the complainant or complainants, and each of them, as against the defendants, and each of them, and shall make a decree quieting the title of, and awarding possession to, the complainant or complainants entitled thereto; and may award injunctions, temporary or perpetual, appoint receivers, and make such orders as to costs as may be necessary for the protection of the rights of the parties.

Unconstitutional as far as it undertakes to convert a common law right into an action cognizable in equity.—Trustees Internal Imp. Fund v. Gleason, 39 Fla., 771; 23 So. Rep. 529; Hughes et al. v. Hannah et al., 39 Fla., 366; 22 So. Rep. 613.

Sec. 1, Ch. 4739, Acts 1899.

1950. Quieting title, removing clouds.—A bill in equity may be brought and prosecuted to a final decree by any person or corporation, whether in actual possession or not, claiming title, legal or equitable, to real estate against any person or corporation not in actual possession, who claims an adverse estate or interest, legal or equitable, therein, for the purpose of determining such estate or interest and quieting or removing clouds from the title to such real estate.

It shall be no bar to the granting of relief to the complainant in such cases that the title has not been litigated at law or that there may be only one litigant to each side of the controversy, or that the adverse claim, estate or interest against which such bill is brought is void upon its face, or, though not void on its face, require evidence, extrinsic of itself, to establish its validity.

Bill to Remove Cloud.—Complainant must allege possession or that the land is wild, unimproved land.—Conant v. Buesing, 23 Fla., 559; 2 So. Rep. 882; Sloan v. Sloan, 25 Fla., 53; 5 So. Rep. 603; Harworth v. Norris, 28 Fla., 763; 10 So. Rep. 18; Patton v. Crumpler, 29 Fla., 573; 11 So. Rep. 225; Gamble v. Hamilton, 31 Fla., 401; 12 So. Rep. 229; Graham v. Mortgage Co., 33 Fla., 356; 14 So. Rep. 796; Winn v. Strickland, 34 Fla., 610; 16 So. Rep. 606; Woodford v. Alexander, 35 Fla., 333; 17 So. Rep. 658; Levy v. Ladd, 35 Fla., 391; 17 So. Rep. 635; Brown v. Solary, 37 Fla., 102; 19 So. Rep. 161; Watson v. Holliday, 37 Fla., 488; 19 So. Rep. 640; Richard v. Morris, 39 Fla., 205; 22 So. Rep. 650; Clem v. Meserole, 44 Fla., 32; 32 So. Rep. 783; Wilkins Remyan et al. v. P. C. Co. et al., 36 Fla., 36; 18 So. Rep. 20. Approving the ruling in.—Caro v. Pensacola City Co., 19 Fla., 766.

To remove cloud from title the party must show clearly the validity of his title and the invalidity of his opponent's.—Levy v. Ladd et al., 35 Fla., 391; 17 So. Rep. 635. Where his title is only a legal title.—Ib.

ARTICLE 17.

REMOVAL OF DISABILITY OF MINORS.

1951. (1501.) Powers of judges to remove.—The judges of the several circuit courts of this State sitting in chancery shall have full power and authority, either in term time or in vacation at chambers, to remove the disabilities of non-age of all minors, male or female, over the age of eighteen years, residing in this State, upon a petition filed by the guardian, and in the event of there being no natural or legal guardian, then by the next friend of such minor in any of the circuits of this State. Ch. 3885, Sec. 1, Jan. 3, 1889.

Applied to disability to practice law.—State ex rel. Lamson v. Baker, 25 Fla., 598; 6 So. Rep. 445.

1952. (1502.) By petition, contents of.—Such petition shall set forth the name and age of such minor and his character, habits, education and mental capacity for business, and briefly set out the reasons why such disabilities should be removed, and shall be sworn to before some officer authorized to administer oaths. Ib., Sec. 2.

1953. (1503.) Proceedings upon petition.—The judge before whom any such petition shall be filed, shall forthwith consider the same, together with such evidence as to the character, habits and mental capacity of the mind as to him shall seem proper; and if satisfied that the removal of the disabilities of such minor will be for his permanent interest or benefit he shall make a decree removing his disabilities of non-age and authorizing such minor to assume the management and control of all his estate, to contract and be contracted with, to sue and to be sued, and to do and perform any and all acts, matters and things that he could do if he were twenty-one years of age. Ib., Sec. 3.

1954. (1504.) Decree to be recorded.—Such decree shall be duly recorded in the office of records of the county in which such minor resides, and a certified copy thereof shall be taken and received as sufficient evidence of the removal of the disabilities of non-age of such minors in all the courts of this State in which said minor may have any business or be engaged in any legal controversy. Ib., Sec. 4.

ARTICLE 18.

REMOVAL OF DISABILITIES OF MARRIED WOMEN.

1955. (1505.) Right to and manner of application.—Any married woman who resides in the State of Florida, and who may wish to take charge of and manage her estate and to become a free dealer in every respect, may apply by petition in chancery to the judge of the circuit court for the circuit in which said married woman may reside, for a license to take charge of and manage her own estate and property, and to become a free dealer.

Ch. 3130, Sec. 1, Mch. 11, 1879.

1956. (1506.) Notice upon filing petition.—She shall give notice once each week for four successive weeks in some newspaper in the county in which she may reside, previous to the filing of such petition, that she intends to apply to the judge of the circuit court for a license to manage, take charge of, and control her property, and to become a free dealer in every respect.

Ibid.

1957. (1507.) Reference to a master.—Upon filing such petition, the judge to whom it may be addressed shall make an order referring it to a master of the court, with direction to take testimony and make inquiry as to the capacity, competency and qualification of such married woman to take charge of and manage her own estate and property, and to become a free dealer, and to report to the judge the testimony and his opinion upon the matter referred.

Ibid.

1958. (1508.) Decree.—Upon the coming in and filing of said report and testimony, and upon the hearing thereof, if the judge shall be satisfied as to the capacity and qualifications of such married woman to take charge of and manage her own estate and property, and to become a free dealer in every respect, it shall be lawful for the judge to make an order confirming the report of the master, and to grant to the applicant a license in accordance with the prayer of the petition; and thereupon such applicant, after she shall have published a copy of the order or decree granting the license in the manner and for the time prescribed for publication of the notice of application, shall be authorized to take charge of and control her estate, to contract and be contracted with, to sue and be sued, and to bind herself in all respects as fully as if she were unmarried.

Ib., Secs. 1, 2.

1959. (1509.) Costs.—All the costs and expenses of such application, whether the same be granted or not, shall be a

Ib., Sec. 3.

lien upon and paid out of the estate of the applicant, to be taxed and collected as costs in other cases.

Rights and privileges of free dealers discussed.—Martinez v. Ward, 19 Fla., 175. Statute constitutional.—Ib. Decree of court of a foreign state not binding here.—Walling v. Christian, 41 Fla., 479; 27 So. Rep. 46.

ARTICLE 19.

JURISDICTION OVER LIENS.

1960. (1510.) Extension of.—All liens of any kind, whether created by statute or the common law, and whether heretofore regarded as merely possessory or not, may be enforced by proceedings in chancery.

Vendor's lien.—Waived.—Conclusion of chancellor.—Set off pleaded—Lucas v. Wade et al., 43 Fla., 419; 31 So. Rep. 231.

ARTICLE 20.

1961. Creditors' bills.—May be filed in the courts of this State, having chancery jurisdiction, before the claims of indebtedness of the persons filing the same shall have been reduced to judgment, but no such bill shall be entertained by such court, unless the complainants therein shall have first instituted suits in the proper courts at law for the collection of their claims; and no final decree shall be entered upon such creditors' bill until such claims shall have been reduced to judgment. Ch. 5137, Acts 1903.

ARTICLE 21.

1962. Restoration of lunatics. Locality of action.—In all cases where any person who has been heretofore or hereafter may be adjudged insane, whether such person be confind in the "Florida Hospital for the Insane" or has been discharged therefrom, or is in the custody of any person, persons or committee, it shall be lawful for any relative, husband or wife, or next friend of such person, as the case may be, to apply by bill in equity to the circuit court of the county Ch. 526, Acts 1903, Sec. 1.

where the alleged lunatic was adjudged insane, or where such person may be living at the date of such application: Provided, however, That when the alleged lunatic is confined in the Florida Hospital for the Insane, the proceedings shall be brought in the county in which said institution is located, to have the mental status of such lunatic inquired into, as to whether such person is still insane and unable to manage his or her affairs.

Ib., Sec. 2.

1963. Contents of bill. Service of process.—Such bill shall contain all the facts upon which a decree restoring such person to a judicially sound mental condition or status is prayed, and shall be under oath. Service of said subpoena shall be made upon the State attorney of the judicial circuit embracing the county in which the cause is brought, and he shall represent the State in such cases.

Ib., Sec. 3.

1964. Hearing upon bill, and practice.—Upon the filing of such bill the judge of the circuit court of such judicial circuit shall issue his order to the sheriff of the said county directing him to bring such person before him at an early day, not to exceed ten days from the date of the filing of the said bill, at which time the issue in the said bill shall be tried, unless for the cause of justice, the time shall be enlarged, in the discretion of the court. In all other respects the ordinary rules of equity practice and of evidence shall obtain in such cases.

Ib., Sec. 4.

1965. Decree upon hearing.—If upon the hearing of such cause it shall appear to the court that the alleged lunatic is of sound mind and is capable of managing his or her own affairs, the judge hearing such cause shall immediately issue his decree therein, which decree shall be to the following effect:

1. That said person is of sound mind judicially, and is capable of managing his own affairs.

2. That said person be immediately restored to his personal liberty.

3. That the guardian, committee or trustee, as the case may be, of such person, shall, within thirty days, or such time as the judge may fix, make full settlement with such person so restored to the status of judicial sanity, of all his or her property in their or his hands, custody and control, as the case may be, under penalty of contempt of court and the punishment thereof.

CHAPTER XI.

OF THE SPECIAL STATUTORY JURISDICTION OF THE CIRCUIT COURT.

ARTICLE 1.—Ejectment. Sections.....1966-1977
2.—Establishment of lost papers, etc. Sections.....1978-1999
3.—Adoption of children. Sections.....2000-2005
4.—Declaring tax assessment invalid. Section..... 2006
5.—Changing name of persons. Section..... 2007
6.—Condemnation of private property. Sections.....2008-2027

ARTICLE 1.

EJECTMENT.

Proceedings in ejecment. Sections.....1966-1970
Betterment proceedings after ejectment. Sections.....1971-1977

PROCEEDINGS IN EJECTMENT.

1966. (1511.) Common law action abolished.—In actions of ejectment it shall not be necessary to have any fictitious parties to the suit, but the party plaintiff may bring his suit directly against the party in possession or the one claiming adversely. Ch. 999, Sec. 1, Dec. 20, 1859.

1967. (1512.) Summons.—The ordinary writ of summons may be issued in all suits in ejectment in this State, and in no case shall it be necessary to serve a copy of the declaration in such suits upon the defendant therein. Ch. 1117, Sec. 1, Feb. 13, 1861.

1968. (1513.) Pleadings.—

1. Declaration.—The declaration shall only contain a plain statement of the cause of action to entitle the plaintiff to recover the land in controversy, together with mesne profits. It may be in the following form, to-wit: Ch. 999, Sec. 1, Dec. 20, 1859.

"In the Circuit Court of Florida, ... Circuit, ... County, to-wit:

"A. B., by his attorney, sues C. D. in an action of ejectment: Because the defendant is in possession of a certain tract or parcel of land, situated, lying and being in said county, known and described as follows, to-wit: (Here describe the land), containing about ..... acres, to which said plaintiff claims title; and the defendant has received the profits of said land since the ..... day of ....., A. D. ...., of the yearly value of ..... dollars, and refuses to deliver possession of said land to the said plaintiff, or to pay him the profits thereof."

Quantity of land recoverable limited by declaration.—Horne v. Carter's admr., 20 Fla., 45. Declaration of undivided interest sufficient; need not allege exclusive possession.—Gale v. Hines, 17 Fla., 773.

Ib., Sec. 2.

2. Plea.—The plea of "not guilty" shall put in issue the title of said lands in controversy.

Ch. 3244, Sec. 3, Feb. 22, 1881.

Such plea shall be held to admit the possession of the defendant, or in case of an adverse claimant, the adverse claim of the defendant. Should the defendant wish to deny possession, it shall be done by special plea.

Effect of plea not guilty.—Horne v. Carter's admr., 20 Fla., 45. Adverse possession may be shown under.—Coffee v. Groover, 20 Fla., 64; Weiskoph v. Dibble, 18 Fla., 24. Special plea equivalent to plea of not guilty should be stricken out.—Barco v. Fennell, 24 Fla., 378; 5 So. Rep. 9; Neel v. Spooner, 20 Fla., 38; Weiskoph v. Dibble, 18 Fla., 24; Wade v. Doyle, 17 Fla., 522; Davis v. Shuler, 14 Fla., 438. Demurrer does not reach such mispleading.—Wade v. Doyle, supra. Plea "of puis darien continuance."—Spratt v. Price, 18 Fla., 289. Equitable plea permissible in ejectment.—Walls v. Endel, 20 Fla., 86.

1969. (1514.) Discovery in ejectment.—Either party to a suit in ejectment may avail himself of the proceedings by interrogatories provided by Sections 1971 and 1972, to obtain a disclosure from the other party of the title and every link thereof, upon which such other party sues or defends.

1970. (1515.) Verdict and judgment for plaintiff.—

Ib., Sec. 1.

1. Verdict.—A verdict for the plaintiff shall state the quantity of the estate of the plaintiff, and describe the land by its metes and bounds, by the number of the lot or other certain description.

Verdict must find right of possession in plaintiff.—Asia v. Hiser, 22 Fla., 378. Sufficient certainty in verdict.—Patrick v. Young, 18 Fla., 50.

Ejectment.—A deed without evidence of possession is not enough to warrant recovery. Florida So. Railway Co. v. Burk adx., 36 Fla., 497; 18 So. Rep. 581. Must also show possession unless the land is wild, unimproved and unoccupied.—Ib.

Possession of land a matter of opinion. The facts constituting the possession should be shown. Same evidence.—Sheriff's deed.—Judgment as basis.—Prior to act 1899 (Chapter 4723). Record of case required.—Clem et al. v. Meserole, 44 Fla., 191; 44 Fla., 32; 32 So. Rep. 783; McGhehee v. Wilkins, 31 Fla., 83; 12 So. Rep. 228; Kendrick v. Latham, 25 Fla., 819; 6 So. Rep. 871; L'Engle v. Reed, 27 Fla., 345-360; 9 So. Rep. 213; Watson v. Jones, 41 Fla., 241; 25 So. Rep. 678; Burt v. Florida So. Railroad Company, 43 Fla., 339; 31 So. Rep. 265.

Ib., Sec. 2.

2.—Judgment.—The judgment awarding possession shall in like manner state the quantity of the estate and give a description of the land recovered.

Judgment (and verdict) must state quantity of estate.—Lungren v. Brownlie, 20 Fla., 491; Neel v. Spooner, 20 Fla., 38.

MISCELLANEOUS MATTERS CONCERNING EJECTMENT.

Relating to Plaintiff.—Plaintiff must prove present right of possession.—Barco v. Fennell, 24 Fla., 378; 5 So. Rep. 9. Legal interest not sufficient

without right of possession.—Jones v. Lofton, 16 Fla., 189. May recover upon prior possession.—Ashmead v. Wilson, 22 Fla., 255. Prior possession defined. —Seymour v. Creswell, 18 Fla., 29. May recover upon right of possession, when.—Hogan v. Carruth, 19 Fla., 84; Seymour v. Creswell, 18 Fla., 29. Cannot recover on title acquired after suit.—Carn v. Haisley, 22 Fla., 317; Paul v. Fries, 18 Fla., 573. How such title made available.—Spratt v. Price, 18 Fla., 289. Nor on title in third person.—Hogan v. Carruth, 19 Fla., 84. What plaintiff must prove generally.—Jones v. Lofton, 16 Fla., 189. Better title or prior occupancy.—Simmons v. Spratt, 20 Fla., 495; DuBois v. Holmes, 20 Fla., 834. When deriving under sale against admr.—Davis v. Shuler, 14 Fla., 438, explaining.—Hartley v. Ferrell, 9 Fla., 374. When claiming under the sheriff's deed. What must show in first instance.—Ib. "Plaintiff must rely upon strength of his own title," considered.—Ib. Must prove identity of land in evidence and in pleadings.—Ashmead v. Wilson, 22 Fla., 255.

Relating to Defendant.—Defendant may defend on outstanding title in third person.—Hogan v. Carruth, 19 Fla., 84; Hogan v. Carruth, 18 Fla., 587; State v. Call, 39 Fla., 165; 22 So. Rep. 266.

Ejectment Between Particular Persons.—Between tenants in common.—Kearns v. Hill, 21 Fla., 185; Gale v. Hines, 17 Fla., 773. By vendor against defaulting purchaser.—Knox v. Spratt, 19 Fla., 817. By mortgage not sustainable.—Berlack v. Halle, 22 Fla., 236.

Appeal.—Lies by defendant from judgment in ejectment.—Simmons v. Spratt, 22 Fla., 370.

Mesne Profits.—Joint judgment for, and damages.—Ashmead v. Wilson, 23 Fla., 255. Improvements cannot, before judgment, be set off against.—Duncan v. Jackson, 16 Fla., 338. How far judgment in ejectment conclusive, as to. —Apalachicola v. Curtis, 9 Fla., 340. Incorporated town may recover.—Ib. When recoverable by bill in chancery.—Ib.

Evidence.—Deed from trustees. I. I. Fund prima facie evidence of title. —Bell v. Kendrick, 25 Fla., 778; 6 So. Rep. 868. Insufficient.—L'Engle v. Reed, 27 Fla., 345; 9 So. Rep. 213. When official maps admissible.—Conover v. Russ, 29 Fla., 338; 10 So. Rep. 585. Proof of fraud when not required.—McClellan v. Solomon, 23 Fla., 437; 2 So. Rep. 825. What admissible where defendant is in possession under contract of purchase from the plaintiff.—Goodwin v. Markwell, 37 Fla., 464; 19 So. Rep. 885. Of estoppel.—Hagan v. Ellis, 39 Fla., 463; 22 So. Rep. 727; Lake v. Hancock, 38 Fla., 53; 20 So. Rep. 811. When burden of proof upon defendant.—Keech v. Enriquez, 28 Fla., 597; 10 So. Rep. 91; Lake v. Hancock, 38 Fla., 53; 20 So. Rep. 811. Tax deed as prima facie evidence.—Brown v. Castella, 33 Fla., 204; 14 So. Rep. 822. Pleading, when equitable plea improper.—Johnson v. Drew, 34 Fla., 130; 15 So. Rep. 780. Action brought by grantee in name of grantor when not dismissed.—Coogler v. Rogers, 25 Fla., 853; 7 So. Rep. 391.

Boundaries by consent.—Watrous v. Morrison, 33 Fla., 261, 14 So. Rep. 805.

When plea without defence may be stricken out.—Buesing v Forbes, 33 Fla., 495; 15 So. Rep. 209.

Verdict and Judgment.—Sufficiency.—Russell v. Marks, 32 Fla., 456; 14 So. Rep. 40; Bartley v. Bingham, 34 Fla., 24; 15 So. Rep. 593; Ib., 24; 15 So. Rep., 592-593. Not a bar to exercise of right of eminent domain.—Jacksonville, etc., Co. v. Adams, 28 Fla., 631; 10 So. Rep. 465.

Title Necessary.—When plaintiff need not show unbroken chain from the government.—Jackson v. Haisley, 35 Fla., 587; 17 So. Rep. 631; Flor-

ida, etc., Co. v. Burt, 36 Fla., 497; 18 So. Rep. 581; Goodwin v. Markwell, 37 Fla., 464; 19 So. Rep. 885.

Title Insufficient.—Deed unaccompanied with proof of title or possession of grantor.—Lake v. Hancock, 38 Fla., 53; 20 So. Rep. 811. Nature of possession to be proven.—Florida, etc., Co. v. Burt, 36 Fla., 497; 18 So. Rep. 581; L'Engle v. Reid, 27 Fla., 345; 9 So. Rep. 213.

General appearance by defendant cures all defects in process.—Bailey v. Bingham, 34 Fla., 19-24; 15 So. Rep. 592.

BETTERMENT PROCEEDINGS AFTER EJECTMENT.

1971. (1516.) Petition of defendant.—If in any suit in ejectment a judgment of eviction shall be rendered against the defendant, he may, at any time within three months after the rendition of such judgment, or if he shall have prosecuted a writ of error, within three months after the affirmance of such judgment, file in the circuit court in which such judgment shall have been rendered a petition setting forth:

1. That such defendant had, before the beginning of the suit in which such judgment shall have been rendered, been in possession of, and that he or those under whom he validly derived had permanently improved the value of, the property in controversy.

2. That he or those under whom he validly derived held said property at the time of such improvement under an apparently good, legal or equitable title, derived from the English, Spanish or United States governments, or from this State; or under a legal or equitable title plain and connected upon the records of a public office or public offices; or under purchase at a regular sale made by an executor, administrator, guardian or other person by order of court, and

3. That when the defendant made said improvements, or purchased said property improved, he believed the title which he held or purchased to the land thus improved to be a good and valid title. Such petition shall pray that the value of the improvements shall be assessed and compensation awarded to him therefor.

Proceedings lie only after verdict in ejectment.—Asia v. Hiser, 22 Fla., 378.

1972. (1517.) Traverse and time of trial.—The plaintiff in the judgment of eviction may traverse the allegations in said petition, or any of them, within sixty days, unless further time be given by the court, after the notice to him of the filing of the petition, and the issue or issues thus made shall stand for trial at the term of court next after the filing

of the traverse; or if no traverse be filed, the petition shall stand for trial at the term of the court next after the expiration of sixty days from the filing of the petition.

1973. (1518.) Trial and verdict of the jury.—If a traverse shall have been filed, the plaintiff and defendant shall proceed to trial of the issues made by the traverse; but if no traverse be filed, the trial shall proceed ex parte, but the defendant shall be bound to prove every allegation of the petition. Whether the trial be ex parte or not, the jury shall be sworn to try the issues as aforesaid, and if they find them all in favor of the defendant in ejectment, to assess:

1. The value of the land at the time of the assessment, irrespective of the improvements put upon the land by the defendant, or those under whom he derives, and if any, the injury done to the land by such defendant, or those under whom he derives.

2. The value of the permanent improvements at the time of the assessment.

3. The injury, if any, done to the land by the defendant or those under whom he derives, and

4. The value of the use of the land by the defendant between the time of the judgment in ejectment and the time of the assessment, or if the defendant has been evicted from, or has surrendered the premises, from the time of the judgment to the time of the surrender or eviction. The jury shall specify in its verdict separately its findings upon each of the matters submitted to it.

1974. (1519.) Judgment for plaintiff.—Upon the rendition of such verdict the court shall cause the clerk to ascertain whether the balance of the last three assessments aforesaid (that is, of the value of the improvements, the extent of the injury and the value of the use of land), be in favor of the plaintiff in ejectment, or of the defendant, and to ascertain the amount of such balance; if the verdict be in favor of the plaintiff, on the issues made upon the petition, a judgment shall be rendered against the defendant for costs, whether the balance of the assessment aforesaid be in favor of the plaintiffs or the defendant; but if the balance of the assessments be in favor of the plaintiff, he shall have in addition to the judgment for costs a judgment for such balance.

1975. (1520.) Judgment for defendant.—If the verdict upon the issues presented by the petition be in favor of the defendant, and the balance of assessments be also in his fa-

vor, a judgment for costs shall be entered against the plaintiff, and a further judgment that unless the plaintiff shall within sixty days pay or secure, as hereinafter provided, the amount of the balance of assessments against him, the defendant may pay or secure to the plaintiff the value of the land as assessed by the jury, as aforesaid.

1976. (1521.) Payment by plaintiff.—The plaintiff may pay said balance in cash, or may execute and deliver to the defendant a bond with two good and sufficient sureties, to be approved by the clerk of said court, conditioned to pay to the defendant in ejectment the said balance in two equal annual installments, with interest at eight per cent per annum. If the plaintiff shall pay the said sum within sixty days, or if payment of the said bond shall be received, satisfaction of the judgment shall be entered and all rights conferred upon the defendant by said judgment shall cease.

1977. (1522.) Payment by defendant.—If, however, plaintiff shall not pay or secure the said sum within said sixty days, the defendant shall have the right within sixty day thereafter to pay to the plaintiff the value of the land as assessed by the jury, or to give to the plaintiff a bond with good and sufficient sureties, to be approved by the clerk of the said court, conditioned to pay to the plaintiff the said value in two equal annual installments, with eight per cent interest; or if the plaintiff should fail to pay the bond given by him as aforesaid when the same shall become due, the defendant shall again have the privilege for sixty days after the expiration of the time fixed in the bond for payment, of paying to the plaintiff in cash, the value of the land assessed as aforesaid. Upon the payment of said sum to the plaintiff at any of the times hereinbefore mentioned, the title to the said land shall vest in the defendant, and the plaintiff or those holding under him shall give to the defendant a deed to the said land, tenements, hereditaments and appurtenances, and if the defendant shall have been evicted from or shall have surrendered the premises, they shall be restored to him by order of the court, upon motion.

ARTICLE 2.

RE-ESTABLISHMENT OF LOST PAPERS AND RECORDS.

What may be re-established. Section..... 1978
Who may re-establish. Section..... 1979
In what court proceedings to be had. Section..... 1950
Proceedings to be concurrent with equity and common law proceedings. Section..... 1981
Effect of re-establishment. Section..... 1982
Marks and brands. Section..... 1983
Writs of fi. fa. Sections.....1984-1986
Titles to land destroyed by fire. Sections.....1987-1995
Proceedings and process in pending suits. Section..... 1996
Papers and records other than those mentioned. Sections.....1997-1999

1978. (1523.) What may be re-established.—All papers, written or printed, of any kind whatsoever, and the records and files of any official, court or public office, may be re-established in the manner hereinafter provided.

Includes papers lost by an attorney or officer of court after action brought.—Bigelow v. Summers, 28 Fla., 739; 9 So. Rep. 690.

1979. (1524.) Who may re-establish.—Any person interested in the paper, file or record to be re-established may re-establish the same.

1980. (1525.) In what court to be had.—All proceedings had under the provisions hereof shall, if the re-establishment be sought of a record or file, be had in the circuit court of the county where such record or file existed before the loss or destruction thereof; and if it be a private paper, in the circuit court of the county where any person to be affected thereby shall live, or if such persons be non-residents, then in the circuit court of any county in which the person seeking the re-establishment may desire.

1981. (1526.) Proceedings to be concurrent with equity and common law proceedings.—Nothing herein contained shall prevent the re-establishment of lost papers, records and files, at common law or in equity in the usual manner. Ch. 1369. Sec. 12.

Power of equity to establish.—Griffin v. Fries, 23 Fla., 173; 2 So. Rep. 266.
Equity cannot establish records of courts of law.—Keen v. Jordan, 13 Fla., 327.
Court of law may establish its own records.—Pearce v. Thackery, 13 Fla., 574.
Practice in such cases.—Ib.

1982. (1527.) Effect of re-establishment.—Any paper, record or file re-established shall have the force and effect of the original. A private paper shall have such effect im- Nov. 21, 1829. Sec. 5.

mediately upon the recording of the order re-establishing it; but a re-established record shall not have that effect until recorded in the book provided for the class of records to which it belongs, and a re-established paper or file of any official, court or public officer shall not have such effect until a copy thereof, certified by the clerk of the circuit court, shall have been filed with the official or in the court or public office where the original belonged. A certified copy of all re-established papers required or authorized by law to be recorded may be re-recorded.

Ch. 5162, Acts 1903, Sec. 1.

Where any deed forming a link in a chain of title to any land in this State has been placed upon the proper record without having been acknowledged or proven for record, has been lost or destroyed, certified copies of the record of such deed as so recorded may be received as evidence in any court of this State in proceedings to re-establish such deed: Provided, Such deed has been so recorded for twenty years.

Does not bar defence to the lost paper.—Prescott v. Johnson, 8 Fla., 391. Due form of re-established deed presumed.—Christy v. Burch, 25 Fla., 942; 2 So. Rep. 258.

METHOD OF RE-ESTABLISHMENT.

Ch. 1369, Sec. 2.

1983. (1528.) Marks and brands.—The person desiring the re-establishment of the record of any marks or brands, shall file in the circuit court a petition under oath, describing the particular mark or brand sought to be re-established, and stating the place where the same was recorded, the time of record as near as may be known, and that the record thereof has been lost or destroyed, and requesting the re-establishment of the record of such mark or brand. Upon the filing of such petition, the judge of said court shall make an order re-establishing the said record.

WRITS OF FI. FA.

Ch. 735, Acts 1870, Sec. 7.

1984. (1529.) Affidavit and order.—Lost or destroyed writs of fi. fa. issued upon lost or destroyed judgments may be re-established by the filing in the circuit court of an affidavit by the party desiring the re-establishment, his agent or attorney, setting forth the loss or destruction of the writ, the contents of it and the loss or destruction of the judgment upon which the writ issued, and the belief of affiant that the plaintiff will, in whole or in part, lose the amount of the lost or destroyed judgment before the same can be re-established. Upon the filing of such affidavit, the clerk of said court shall make an order that another writ shall be issued

in lieu of the original lost or destroyed, and the proper officer of the court from which the writ originally issued shall issue such other writ.

1985. (1530.) Defendant may release property levied upon under such new writ.—The defendant may release any property levied upon under such new writ by filing with the officer executing the same an affidavit sworn to by himself, his agent or attorney, that the lost or destroyed judgment has been satisfied in whole or in part, and by filing with said officer a bond, with two good and sufficient sureties, payable to the plaintiff, in double the amount claimed to be due on said judgment, conditioned to pay to the plaintiff the amount adjudged by the court, in the proceedings provided for hereafter, to be due the plaintiff upon said judgment. Ibid.

1986. (1531.) Proceedings thereafter.—The officer shall return the affidavit and bond to the court issuing the execution, and at a term of court thereafter the issues presented by the said affidavits of the plaintiff and of the defendant shall be tried by the court and jury. If the jury find in favor of the plaintiff they shall specify the amount due him upon the execution, and judgment therefor shall be entered up against the defendant and the sureties on the bond for such sum, and execution shall issue thereon. Ibid.

The proof in the establishment of lost instruments should be clear and satisfactory.— Fries v. Griffin, 34 Fla., 212.

ESTABLISHMENT OF TITLES TO LAND DESTROYED BY FIRE.

1987. Chancery courts have power to establish.—When the records or any material part thereof in any county in this State have been destroyed by fire so that a connected chain of title cannot be deduced therefrom, any court in such county having chancery jurisdiction shall have the power to inquire into the condition of any title to or interest in any land in such county, and to make all such orders, judgments and decrees as may be necessary to determine and establish said title against all persons known or unknown. Sec. 1, Ch. 4952, Acts 1901.

1988. Who may file petition in chancery.—It shall be lawful for any person or persons claiming a freehold estate in any land in such county who, or whose grantors, were in the actual possession of such land at the time of such destruction of such records, and who is in possession thereof at the time of the filing of the petition hereinafter mentioned, to file a petition in chancery in any court in such county Sec. 2, Ib.

having chancery jurisdiction, praying for a decree establishing, and confirming his or their title to and estate in such land. Tenants in common or persons owning as aforesaid an undivided interest in any such lands may join in such petition.

Sec. 8, Ib.

1989. What petition shall state.—Said petition shall state clearly the description of said lands, the character and extent of the estate claimed by the petitioner, and from whom and when and by what mode he derived his title thereto; it shall give the names of all persons owning or claiming any estate or possessory interest in said lands, or any part thereof, and also all persons who shall be in possession of said lands, or any part thereof, and also all persons to whom any of such lands have been conveyed, and the date or dates that such conveyances shall have been recorded in the office for the recording of deeds of such county since the time of the destruction of such records as aforesaid, and prior to the time of the filing of such petition, and their residences so far as the same are known to the said petitioner; and if no such persons are known to the said petitioner, it shall be so stated in said petition.

Sec. 4, Ib.

1990. Who shall be made defendants.—All persons so named in said petition, except the petitioner, shall be made defendants and shall be notified of said suit by subpoena, if residents of this State, in the same manner as is now or may hereafter be required in chancery proceedings by the laws of this State, and non-residents may be served by publication, posting and mailing thereof to defendants whose residence may be known, in like manner as is or may be provided by law for the service of process upon non-resident defendants in other suits in chancery, except as may be otherwise provided herein. All other persons shall be deemed and taken to be defendants by the name or designation of "all whom it may concern," and notice to them under that designation shall be published and posted as aforesaid.

Sec. 4, Ib.

1991. Form of notice and other proceedings.—Said notice shall be entitled "Land Title Notice," and shall be substantially as follows:

A., B. and C., etc. (here give the names of all known defendants, if any), and to all whom it may concern: Take notice that on the ..... day of ....., A. D. 19...., a petition was filed by ..... in the circuit court for ..... County in chancery, to establish his title to the following described land

(here insert a full description of the land mentioned in said petition).

Now unless you appear on the ..... day of ..... A. D. 19...., in said court and do hereafter as required by law show cause against such application, said petition shall be taken as confessed and the title and estate of said petitioner will be decreed and established according to the prayer of said petitioner, and you will be forever barred from disputing the same.

Clerk of the Circuit Court ..... County, Florida.

Said petition shall be verified by the affidavit of the petitioner, and any party so swearing falsely shall be deemed guilty of perjury, and punished by imprisonment in the State prison not exceeding twenty years, and shall be liable in damages to any person injured by such false statement to be recovered in an action in any court having jurisdiction thereof. It shall be the duty of the clerk of the court when such petition is filed to enter in a separate book or books, to be kept for the purpose, the names of the petitioners and defendants, the date of the filing of said petition and description of the lands included therein, which record shall be at all times open to the public, and said books shall be properly indexed.

1992. Pleadings.—Any person interested may oppose any such petition and file his demurrer or answer thereto on the rule day next after the day to and upon which he shall have been cited to appear therein, and may also file a cross petition if he shall desire to do so; said answer shall admit, confess, avoid or traverse all the material allegations of the petition, and shall, except when made by a guardian ad litem, be verified by affidavit in the same manner as is or may be required as to other answers in chancery cases. The petition may, however, waive the verification of the answer by oath, as aforesaid, in which case the answer shall have no other or greater weight as evidence than the petition. Sec. 5, Ib.

1993. Decree pro confesso and proceedings therein.—If no demurrer or answer shall be filed on or before the rule day upon which the same shall be due as aforesaid, a decree pro confesso may be taken in like manner and with like effect as a decree pro confesso upon a bill in other chancery cases, and further proceedings may be had in referring same, taking evidence therein and rendering a decree therein or otherwise, as in other chancery cases. Sec. 6, Ib.

1994. Court to determine in whom title is vested.—It shall be competent for any such court in all such decrees in Sec. 7, Ib.

such proceedings to determine and decree in whom the title in or to any land described in such petition is vested, whether the petitioner, or in any other of the parties before the court; but said decree shall not in any wise affect any lien or liens to which said land may be subject, whether by mortgage, deed of trust, judgment, statute, mechanic's lien or otherwise, but shall leave all such liens to be ascertained or established or enforced as is or may be provided by law.

Sec. 8, Ib.

1995. What practice shall apply.—The rules, regulations and practice governing pleadings or practice in chancery in this State shall apply to the proceedings under this act so far as they are not inconsistent herewith, and any appeal may be taken and prosecuted in the proceedings on any such petition in like manner and with like effect as in other chancery cases.

PLEADINGS AND PROCESS IN PENDING SUITS.

Ch. 735, Acts 1870. Sec. 6.

1996. (1532.) Proceedings described.—Lost or destroyed proceedings, and any paper or file affecting them, in any suit pending and undetermined in any court, may be re-established as follows:

The person desiring such re-establishment shall file a substantial copy of such proceedings or writing in the circuit court, and shall give ten days' notice in writing to all parties to the suit or their attorneys of record, of an application to the court for the re-establishment of such proceedings, or paper or file. Such notice shall be personally served at least ten (10) days before the time fixed for such application. Upon the hearing of such application the judge may, in such manner as he may think best, ascertain the facts, and upon such ascertainment determine the application.

ESTABLISHMENT OF PAPERS AND RECORDS OTHER THAN HEREINBEFORE MENTIONED.

Ch. 3019, Sec. 2, Mch. 2, 1877.

1997. (1533.) Petition.—A person desiring to establish any paper, record or file, except those provided for in Sections 1983 to 1996, inclusive, shall file in the circuit court a petition, sworn to by himself, his agent or attorney, setting forth that such paper, record or file has been lost or destroyed, and is not in the custody or control of the petitioner, the time and manner of such loss or destruction, and that a copy (to be attached to the petition) is a substantial copy of that lost or destroyed, and that persons to be named in

the petition are the persons, and the only persons known to the petitioner, interested for or against the re-establishment of such paper, record or file.

1998. (1534.) Notice.—

1. Contents of.—Upon the filing of such petition, the clerk shall issue a notice, to which shall be attached a copy of the petition, requiring the persons named in the petition as interested, and all other persons interested to appear before the judge of the said court at a time to be fixed in said notice, not less than forty-five nor more than sixty days from the issuance of the notice, to show cause why the said paper, record or file should not be re-established. Ib., Sec., 8.

2. Publication and Service of the Notice.—The clerk shall also cause to be published notice to all such persons so named and not served, and to all other persons, to appear in the said court and show cause as aforesaid at a day not less than forty-five nor more than sixty days from the first publication of said notice. Ch. 2048, Sec. 1. — —, 1878.

The notice shall contain a brief statement of the substance of the petition, and of the copy attached to it, and shall be published once each week for four successive weeks in a newspaper published in the county in which the proceedings are taken. It shall also be served as other legal process is served upon all persons within the jurisdiction of the court.

1999. (1536.) Proceedings and judgment.—Answers filed by persons appearing in obedience to the notices aforesaid shall be sworn to, and shall be filed upon the day fixed for appearance. All issues of law or fact shall be determined by the court, and evidence shall be by affidavit, or in writing before an examiner to be appointed by the court, or orally before the court, as the court may determine. Upon the hearing the court may deny the prayer of the petition, or may grant the same, or may re-establish the paper, record or file in such form as the law and the evidence may justify. No application for re-establishment shall be granted without proof of the material matters set forth in the petition, or by written consent of the person or persons adversely interested. Ch. 3019, Sec. 4, Mch. 2, 1877.

Judgment may be vacated or modified at same term.—Hart's extrs. v. Smith, 17 Fla., 767. What defence to re-establishment not permissible.—Commissioners Suwannee County v. Commissioners Columbia County.—19 Fla., 78.

ARTICLE 3.

ADOPTION OF CHILDREN.

Sections ..... 2000-2006.

Ch. 3594, Sec. 1, Feb. 4, 1885.

2000. (1536.) Authority conferred.—The judges of the circuit courts, on the application of any person, shall have full power and authority to legalize the adoption of any child by any person who may apply therefor.

Ib., Sec. 2.

2001. (1537.) Notice of petition.—The person who desires to make such application shall give four weeks' notice of the intention to apply in a newspaper published in the county of residence of such person.

Ib., Sec. 3.

2002. (1538.) The petition.—After giving the notice provided for, the person desiring to adopt any child shall file a petition to the judge of the circuit court in the circuit in which such person applying resides. Said petition shall contain the age as nearly as can be ascertained of the child, clearly setting forth the reasons why the person applying desires to adopt said child, and shall be sworn to by the petitioner, or by his attorney-at-law, before some officer authorized by law to administer oaths.

Ibid.

2003. (1539.) Appointment of guardian ad litem.—Upon the filing of said petition, the judge shall appoint a guardian ad litem to represent said minor upon the hearing of said petition.

Ib., Sec. 4.

2004. (1540.) Hearing, and order.—The judge shall, when the provisions of this statute have been complied with, after hearing the said petition, together with such evidence as may be presented, in his discretion, grant an order authorizing the adoption of the child by the person so complying with the provisions of this law; and if the order be granted, the same shall be made a matter of record in said circuit court.

Ib., Sec. 5.

2005. (1541.) Effect of the order.—Any child adopted by any person under the provisions of this law shall be declared the child and heir-at-law of the person applying for his adoption. Nothing in this law shall in any way interfere with any rights of property belonging to the child at the time of the adoption.

ARTICLE 4.

DECLARING TAX ASSESSMENT INVALID.

2006. (1542.) Procedure and order.—In all cases where assessments are made against any person, body politic or corporate, and payment of the same shall be refused upon allegation of the illegality of such assessment, such person, body corporate or politic, may apply to the judge of the circuit court by petition setting forth the alleged illegality, and present the same, together with the evidence to sustain it, and the judge shall decide upon the same, and if found to be illegal shall declare the assessment not lawfully made. Ch. 151, Sec. 4,, Jan. 4, 1848.

Petition must show existing illegality at time of filing.—Pensacola v. Bell, 22 Fla., 466. Part of assessment may be declared lawful and part unlawful.—Pensacola v. L. & N. R. R. Co., 21 Fla. 492. Overruling.—Basnett v. Jacksonville, 19 Fla., 664. Lies only to correct illegal assessment and not discretionary act of county commissioners.—Shear v. County Commissioners, 14 Fla., 146. Construed.—City of Tampa v. Kaumitz, 39 Fla., 683; 23 So. Rep. 416; City of Tampa v. Mugge, 40 Fla., 327; 24 So. Rep. 489. Taxes legally assessed must be paid before relief granted.—Ib. Kissimmee v. Cannon, 26 Fla., 33; 7 So. Rep. 523.

ARTICLE 5.

CHANGING NAME OF PERSON.

2007. (1543.) Procedure.—The circuit courts of this State shall have power and authority to change the names of persons residing in this State, upon a petition filed by such persons in any circuit court. Such petition shall state the name of the petitioner, and the name such petitioner desires to take; and the court shall decree that the petitioner's name be changed to the name which said petitioner desires, by which the said petitioner shall ever thereafter be known. Ch. 1324, Sec. 1. Dec. 3, 1862.

ARTICLE 6.

EXERCISE OF RIGHT OF EMINENT DOMAIN.

Sections.....2008-2027

2008. (1544.) Mode of instituting proceedings.—In all cases where the right to take private property for public Amended by Sec. 11, Ch. 5017, Acts 1901.

use without the consent of the owner has been heretofore or shall be hereafter conferred by the Constitution, general law or special charter, upon any State, county or municipal authority, public body, officer, agent or commission, or upon any corporation, it, he or they having such right may file a petition in the office of the clerk of the circuit court of the county wherein the property lies, which petition shall set forth:

1. The authority under which the petitioner claims the right to take the property for public use.

2. A description as accurate as may be of the property sought to be taken.

3. The names of the occupants of the property, and the names, places of residence, legal disabilities (if any) and the interest of all owners and mortgagees, if the same by diligent search can be ascertained.

4. The purpose of the taking, and that the property is necessary for that purpose.

5. If the petitioner be a corporation seeking to obtain a right-of-way, that it has located its line and intends in good faith to construct the same over the property; and if the petitioner be a municipal corporation seeking to alter, extend and open a street, lane or avenue, that the said improvement has been ordered by the proper municipal authority.

Trespasser may exercise right.—Sate ex rel. v. J., T. & K. W. R. R. Co. 20 Fla., 616.

Sec. 2, Ib.

2009. Parties defendant.—If any interest in the property or any lien thereon, belongs to the unsettled estate of a decedent, the executor or administrator shall be made the party defendant with respect to such interest without joining the devisee or heir, and if a trust estate, the trustee shall be made the defendant without joining the cestui que trust. No married woman shall be made a party defendant with respect to any inchoate right of dower. No judgment creditor or other lienor (except mortgagees as aforesaid) need be made parties defendant by the petitioner.

Sec. 3, Ib.

2010. Affidavit and prayer of petition.—The petition shall be verified by oath of the petitioner. If the petitioner be a municipal corporation, the oath shall be made by the mayor; if a county, by the chairman of the board of county commissioners; if a private corporation, by the president or some other executive officer. There shall be annexed an affidavit by the same affiant that diligent search and inquiry has been made by the petitioner to ascertain the names places of residence, legal disabilities (if any) and interest o

the owners and mortgagees of the property, and that these as ascertained are set forth in the petition. The prayer shall be that the property described in the petition may be condemned for the uses and purposes set forth therein.

2011. Process, service and publication.—When the petition is filed the clerk shall issue a writ or writs of scire facias directed to the sheriff or sheriffs of the county or counties wherein the defendants or any of them reside, as alleged, commanding him or them that he or they make known to the defendants that they be and appear in the said circuit court on the second rule day after the issuing of the writ, to show what interest they have in the property and to show cause why it should not be taken for the uses and purposes set forth in the petition, which writs shall be served by the proper sheriffs in the same manner as writs of summons are served. Alias and pluries writs may be issued as in other cases, returnable, however, as writs of summons are returnable. If any defendant be alleged to be a non-resident of the State, the clerk shall, within two days of issuing the writ of scire facias, mail a certified copy of such writ to such defendant at his place of residence as named in the petition, which mode of service shall be as effectual as though the defendant had been actually served within this State, and the clerk shall file a certificate of such constructive service of record in the cause. If the residence of any defendant be given as unknown he shall be held served by the notice of publication provided in the following section. Sec. 4, Ib.

After issuing the writ the clerk shall in every case forthwith publish in some newspaper published in the county once a week for as many weeks as may be until the return day a notice directed to all persons interested in, or having liens upon, the property, in the same terms as the writ of scire facias, to appear and show cause or else to be barred, and the clerk shall file a certificate of the publication of record in the cause. All persons not appearing and answering on the return day, whether under disabilities or not, shall be bound by the proceedings, and defaults may be entered against them; but nothing shall prevent any person who is shown by the record to be interested in the property from appearing before the jury to contest for and claim the amount of compensation that he conceives to be due for the property. Defaults may be opened by the judge before the next rule day, for good cause shown by interested persons.

2012. Intervention.—Any person interested in or having a lien upon the property, not made a party, may become a party as of course by filing his petition of intervention Sec. 5, Ib.

setting forth under oath his interest, before the return day, or afterward by order of the judge.

Sec. 6, Ib.

2013. Jury empaneled and proceedings before them.—If no cause be shown to the contrary the judge of the circuit court shall cause a jury of twelve men to be empaneled to try what compensation shall be made to the defendants for the property sought to be appropriated, irrespective of any benefit from any improvement proposed by the petitioner, which issue shall be tried in the same manner as the other issues of facts are tried in the said circuit court. The jury shall in all cases view the property, unless the parties interested in the issue consent to dispense with the viewing. The judge may, in his discretion, try any such cause in vacation in the county, and may make all necessary orders for procuring a jury or in reference to the case. If the jury cannot agree, another jury may be empaneled forthwith.

Sec. 7, Ib.

2014. Powers of the court.—The court shall have full power to order or grant amendments, and to make all orders necessary to the justice of the cause, and also to grant new trials.

Sec. 8, Ib.

2015. Verdict of the jury.—The verdict of the jury shall state: First, an accurate description of the property taken; second, the compensation to be made therefor; third, the amount of such compensation to which each owner is entitled.

Sec. 9, Ib.

2016. Judgment.—The judgment shall recite the verdict in full, and shall be that the property therein described be appropriated to the petitioner for the uses alleged in the petition, upon the petitioner paying or securing by deposit of money the compensation found by the verdict of the jury.

Sec. 10, Ib.

2017. Petitioner to pay compensation and appropriate the property.—The petitioner within ten days after the rendition of the judgment shall pay into the court for the use of the defendant, the compensation ascertained by the jury, or else the proceedings shall be null and void, unless further time be allowed by the court. Upon such payment, and upon the recording in the registry of deeds of the judgment with the clerk's certificate that the compensation has been paid into the court, the petitioner shall have full and lawful authority to enter upon and appropriate the property for the uses aforesaid, with the same effect as though the petitioner held the same by deed or grant from the defendant.

2018. Aggrieved party may have writ of error.—Any party aggrieved by the final judgment of the court may have a writ of error as in common law cases, but such writ of error shall in no case operate as a supersedeas where the petitoner has paid the amount of the compensation into court as aforesaid, so as to prevent a petitioner's appropriation of the property, pending the proceedings in error. If at any time after the writ of error taken by any defendant he shall take out of the court the amount found to be due him, the writ of error shall be dismissed in the Supreme Court upon the certificate of the clerk of the circuit court that the defendant has taken out the compensation aforesaid. Sec. 11, Ib.

2019. Writs of assistance, attachments for contempt.—Whenever the judge shall be satisfied that any person or persons, whether holding under the defendant or not, are preventing or obstructing the petitioner from entering upon or taking possession of the property after the petitioner is entitled to do so, he may grant such writs of assistance as he may think necessary, or he may proceed by attachment as for contempt of court. Sec. 12, Ib.

2020. Costs of proceedings.—All costs of proceedings shall be paid by the petitioner, except the costs upon the writ of error taken by a defendant on which the judgment of the circuit court shall be affirmed. Sec. 13, Ib.

2021. Perfect title, how to acquire.—In any case where the petitioner shall not have acquired title to any lands which the petitioner is using, or if at any time after an attempt to acquire title by condemnation proceedings or otherwise, it shall be found that the titles so acquired are defective, the petitioner may proceed under this article to acquire or perfect such title. Sec. 14, Ib.

2022. As to condemned land for use of railroad or canal company.—Whenever land sought to be condemned to the use of a railroad or canal company is in the possession, under any law of this State, of another railroad or canal company, which is using the same in the construction or operation of its railroad or canal, the use of no more land than is necessary to furnish to the petitioner a right-of-way one hundred and five feet in width across such railroad or canal shall be condemned to such use. Sec. 15, Ib.

2023. Right-of-way of railroads.—If it shall be necessary for any railroad company organized under any law of this State to use for the purpose of its road any lands over which Sec. 16, Ib.

any other railroad company shall have previously acquired the right-of-way for its road, the right to use such lands may be acquired as in other cases. Such lands shall not be taken in a manner to interfere with the main track of the railroad first established, except for crossing, as provided by law.

Sec. 17, Ib.

2024. Right-of-way in incorporated city or town.—Whenever the use of any street, square, highway or public way, or any part thereof, within any incorporated city or town, or provisional municipality or county, is required by any corporation for public use, the right to use such street, square, highway or public way, or any part thereof, shall be granted only by the mayor and board of aldermen of such city or town, or by the commissioners of such provisional municipality, or by the county commissioners of the county.

Sec. 18, Ib.

2025. Right of drainage.—The right of drainage given by Article XVI, Section 28, of the Constitution, shall be exercised in the manner prescribed for the acquiring private property for public use as nearly as may be.

Sec. 19, Ib.

2026. Rights of petitioner.—The right obtained by the petitioner under the provisions of this article shall be a right only to use the property taken for the purposes specified, and shall be held to create an easement, and not a fee simple in the property taken.

2027. All condemnation proceedings heretofore commenced and now pending shall be continued under the provisions of the foregoing section.

Eminent domain.—Railroad extension.—Designation of route.—Petition.—Florida Central & P. R. Co. v. Bell et al., 44 Fla., 31 So. Rep. 259. Compensation.—Writ of error.—Florida Central & P. R. R. Co. v. Bear, 44 Fla., 31 So. Rep. 287.

Condemnation proceedings.—Jacksonville, T. & K. W. Ry. Co. v. Adam et al., 33 Fla., 608; 15 So. Rep. 257; Herman v. I. St. A. & I. R. R. Co., Fla., 85; 23 So. Rep. 587. Right not barred by judgment in ejectment.—J., T & K. W. Ry. Co. v. Adams, 28 Fla., 631; 10 So. Rep. 465. Notice in same case.—27 Fla., 443; 9 So. Rep. 2.

CHAPTER XII.

ITS COURT COMMISSIONERS.

Appointment of. Section....2028
Proceedings before. Section....2029
Effect and record of orders. Section....2030
Power to administer oaths in. Section....2031
Compensation of. Section....2032
Costs in cases before. Section....2033

2028. (1565.) Appointment of.—Upon the application of two-thirds of the practicing attorneys of any county within this State, to the judge of the circuit court in and for the judicial circuit in which the county represented by said attorneys is located, the judge of said court shall immediately appoint some suitable practicing attorney in said county as such court commissioner, whose duties are now and may hereafter be prescribed by law. The appointment of such court commissioner shall be made in writing, signed by the judge, and recorded in the book of minutes of the court in the county where the commissioner resides, and the commissioner must file his oath of office with the clerk of the circuit court of said county.

As amended by Ch. 4908, Acts 1901.

2029. (1566.) Proceedings before.—Proceedings before a court commissioner shall be in like manner and under the same rules and regulations as are provided by law for such proceedings before a circuit judge. After rendering his decision in writing in any proceeding before him, he shall immediately file all the papers in the case in the clerk's office.

2030. (1567.) Effect, and record of orders.—The orders of court commissioners shall be of like force as if allowed by the judge and the same may, on motion, be confirmed, qualified, or set aside by the circuit judge, of which motion such notice must be given as the judge may deem sufficient.

2031. (1568.) Power to administer oaths.—Court commissioners are empowered to administer oaths in causes before them.

2032. (1569.) Compensation of.—The fees and compensation of court commissioners shall be as follows:

For attendance upon hearing (each) case, each day...$5 00
Habeas corpus, issuing writ of.... 1 00
Injunction (examining bill and), allowing or disallowing 5 00
Testimony, taking in cases before him.
Writing, and filing papers, or making copies, like fees as are allowed other officers for like services.

2033. (1570.) Costs.—Costs in injunction cases shall be paid by the party applying for the writ and shall be taxed in the bill of costs.

Costs in cases of habeas corpus shall be paid by the party applying for writ in case he shall not be discharged from the arrest and imprisonment complained of, and the clerk of the circuit court shall, upon demand of the commissioner issue execution therefor; but if the party shall prove to the satisfaction of the court commissioner that he has not property or means sufficient to pay said costs, said commissioner shall so certify, and such costs shall be paid by the county in which said proceedings are had. If said petitioner shall be discharged, the costs shall be paid by said county.

NECESSARY ARTICLES FOR ITS USE.

(To be procured by the sheriff, when and how: See Section 1843.)

TITLE IV.

OF PROVISIONS APPLICABLE ONLY TO COUNTY COURTS.

In their civil jurisdiction, but incidentally affecting some criminal matters.

Jurisdiction. Section.....2034
Terms. Section.....2035
Clerk. Section.....2036
Sheriff. Section.....2037
Seal. Section.....2038
Records. Section.....2039
Appeals de novo to. Section.....2040
Rules of practice. Section.....2041
General provisions regulating proceedings in. Section.....2042
Salary of judge. Sections.....2043-2044

2034. (1572.) Jurisdiction.—

1. Generally.—The county courts shall have jurisdiction of all cases at law where the demand or value of the property in question does not exceed five hundred dollars, and of proceedings in relation to the forcible entry and unlawful detention of lands, and of proceedings for the removal of delinquent tenants; to hear, try and determine appeals or writs of error from justices of the peace.

Ch. 3730, Acts 1887, Sec. 6.

County courts have jurisdiction in suits where the demand does not exceed $500. The circuit court has no original jurisdiction in such cases in

counties where county courts have been organized.—Varn v. Alderman, 42 Fla., 378; 29 So. Rep. 323.

2. Of Special Statutory Proceedings.—Said courts shall have jurisdiction of all the special statutory proceedings mentioned in Title VII, Division 2: Writ, attachment, garnishment, forcible entry and detainer, replevin, enforcement of lien and proceedings between landlord and tenant. The proceedings in such cases shall be as provided for in said section.

2035. Terms.—The terms of the county courts now existing, or which may hereafter exist under the laws of this State, shall be held four times a year at such times as the act or acts creating such courts shall designate: Provided, That in cases of misdemeanors, where the defendant and prosecuting attorney may agree to waive trial by jury, such cases may be heard in vacation. Sec. 1, Ch. 4406, Acts 1895.

2036. (1574.) Clerk.—The clerk of the circuit court in counties in which there is no criminal court of record established, shall be clerk of the county court, and shall hold his office at the office of the clerk of the circuit court; in counties where a criminal court of record is established, the clerk of said criminal court shall be the clerk of the county court and shall hold his office in the county court house. Ch. 3730, Acts 1887, Sec. 4.

Such clerk of the county court shall sign all papers required to be signed pertaining to said county court as "County Clerk."

2037. (1575.) Sheriff.—The sheriff of the county shall serve and execute all civil process and do and perform all duties in and about county courts which are required to be performed by an executive officer.

Executions.—As to levying executions issued from county courts on land lying in other counties: See Section 1619.

2038. (1576.) Seal.—The seal of the county court shall be provided, approved, paid for, and an impression thereof deposited as are seals of the circuit court. (See Section 1852.) In the case of the loss or destruction of such seal the private seal of the clerk shall suffice until an official seal is provided. Ibid.

2039. (1577.) Records.—The clerk shall keep for each county court minute books, bench dockets, bar and motion dockets, and judgment and execution dockets, which shall Ib., Sec. 7.

be kept in the same manner as such dockets are kept for the circuit courts.

Ibid.

2040. (1578.) Appeals de novo.—When cases appealed to the county courts shall be tried de novo, all the original papers and pleadings shall be transferred by the justice of the peace appealed from to the county court, and the said court shall proceed to hear, try and determine the same, in the same manner as if the said cause had been commenced in such court, and render final judgment therein.

2041. (1579.) Rules of practice.—The rules of pleading and practice adopted by the Supreme Court for the government of the circuit courts shall be the rules of practice, pleading and procedure in civil causes for the county courts, so far as applicable and not otherwise provided for.

2042. (1580.) General provisions.—All the provisions of Title I, Second Division of these General Statutes, which can be applied to the county courts, or to any proceeding therein, or to any officer thereof, shall be applicable thereto in all cases except where they are expressly or impliedly restricted to courts other than the county courts, and except where they are inconsistent with the provisions of this title.

In counties where county courts are in existence circuit courts have no jurisdiction in suits that do not involve more than five hundred dollars.—Varn v. Alderman, 43 Fla., 378; 29 So. Rep., 823.

Sec. 3, Ch. 4406, Acts 1895.

2043. Salary of judge of county court.—The salary of the judge of the county court shall be three hundred dollars per annum. He shall also have a docket fee of $1.00 in civil cases, to be taxed as other costs in the case.

2044.—Compensation where population exceeds twenty-three thousand.—In each county where the population exceeds twenty-three thousand the judge of the county court shall receive an annual salary of twelve hundred ($1200.00) dollars, payable quarterly, by the county treasurer. This compensation shall exclude all salary, fees or other compensation which the said judge of the county court, as such, might receive or be entitled to, under or by virtue of any other laws, but it shall not exclude or affect any fees, salary or other compensation which the county judge, as such, may receive or be entitled to.

TITLE V.

OF PROVISIONS APPLICABLE ONLY TO COUNTY JUDGES' COURTS.

In their civil jurisdiction, but affecting incidentally some criminal proceedings.

GENERAL PROVISIONS.

ARTICLE 1.—General powers. Section..... 2045
Bond. Section..... 2046
Clerk. Section..... 2047
Seal. Section..... 2048
2.—As judge of probate. Sections.....2049-2056
3.—As justice of the peace. Sections.....2057-2060
4.—In jurisdiction of forcible entry and unlawful detainer. Section..... 2061

ARTICLE 1.

GENERAL PROVISIONS.

Sections.....2045-2048

2045. (1581.) General powers.—County judges' courts shall be courts of record, and county judges shall have authority to make all orders or decrees, and to issue every and all process necessary to maintain and carry out their constitutional jurisdiction, or to enforce their authority, and to enter and enforce their judgments and decrees in all matters wherein they have jurisdiction. Ch. 1627, Sec. 2, Aug. 4, 1868.

2046. (1582.) Bond.—Each county judge shall give bond in a sum to be fixed by the board of county commissioners of his county, which shall not be less than one thousand dollars nor more than five thousand dollars. Such bond shall be otherwise governed by the provisions governing bonds to be given by clerks of the circuit courts. Said bond may be sued upon from time to time, in the name of the Governor, for the use of any person interested or aggrieved. Ch. 3724, Sec. 2, June 2. 1887.

2047. (1583.) Clerk.—Every county judge shall have power to appoint a clerk of his court, and the said clerk shall be paid by the said judge, and may exercise all non-judicial functions which the judge may perform. Ch. 3889, Sec. 3, May 28, 1889.

Ch. 1657, Secs. 1, 4, 5, April 5, 1868.

2048. (1584.) Seal.—The seal of the county judge shall be provided, approved, paid for, and an impression thereof be deposited as are seals of the circuit court. In case of the loss or destruction of such seal his private seal shall suffice until an official seal be provided. The use heretofore of the seal of the county courts by county judges is validated.

County judge cannot enter judgment for amount in excess of his civil jurisdiction.—Simpson v. Gonzales, 15 Fla., 9.

ARTICLE 2.

PROVISIONS RELATING TO HIM AS PROBATE JUDGE.

Jurisdiction. Section....2049
Terms. Section....2050
Process. Section....2051
Pleadings. Section....2052
Records. Section....2053
Substitution of judge circuit court for. Section....2054
Appeals. Section....2055
Fees. Section....2056

Ch. 3889, Sec. 1, May 28, 1889.

2049. (1585.) Jurisdiction.—The county judge shall have jurisdiction of the settlement of estates of decedents and minors; to take probate of wills; to grant letters testamentary, of administration, and of guardianship, and to discharge the duties usually pertaining to courts of probate.

Ch. 1627, Sec. 16, Aug. 4, 1868.

2050. (1586.) Terms.—The court of the county judge as a court of probate shall be open at all times for the transaction of its business.

Ib., Sec. 17.

2051. (1587.) Process.—In all matters appertaining to the probate jurisdiction of the county judge, where process is necessary, and which are not matters grantable of course upon motion, such original process shall be made returnable at any time after fifteen days from its date, and shall be served as is by law provided for the service of writs in the circuit court at least ten days before the day of its return, at which time the parties defendant shall be held to file their defences, and the cause shall be heard at such time as the court shall direct; but in all cases a cause may be heard by consent at any time.

2052. (1588.) Pleadings. — The pleadings before the county judge sitting as a court of probate shall be in writing.

1. The Complaint.—The complaint shall state in a plain, direct and concise manner the facts constituting the ground of proceedings, and shall pray such relief as desired, and shall be filed in every instance before any process shall be issued.

Complaint not jurisdictional to appointment of admr.—Robinson v. Epping, 24 Fla., 237; 4 So. Rep. 812.

2. The Answer or Demurrer.—The answer shall, in a direct and concise manner, set up the facts constituting the defence. Either party may demur to the pleadings of his adversary, or any part thereof, when it is not sufficiently explicit to enable him to understand it, or contains no cause of action or defence, if true. Should the party file a demurrer to the complaint, instead of answering upon the day the summons is returnable, the court shall dispose of the demurrer at once, and unless the court is entirely satisfied that justice will be otherwise done, no longer time shall be given. Ib., Sec. 18.

Upon filing the answer the cause shall be at issue, and the proof shall be taken in such manner as may be prescribed by the judge, and the cause shall be heard at such time as the court may direct.

2053. (1589.) Records.—

1. Its Own Records.—Every county judge shall record, or cause his clerk to record, in a book or books to be kept for that purpose, distinctly and at full length, all wills, testaments and codicils proved before him and the proof thereof, all letters testamentary and of administration, all accounts of executors and administrators settled before him, all orders and decrees made by him in relation to such estates, the appointment of, the accounts rendered by, guardians and settled by him, orders and decrees for the sale of minors' real estate, all orders and decrees for the assignment or admeasurement of dower; and all other orders or decrees; to every such book or books he shall keep an index of the subjects therein, which, together with such book or books, shall be open to the inspection of any person, under his supervision. Ch. 6, Sec. 4, July 25, 1845.

2. Records of Former Courts.—All records, judgments and orders of any court in this State heretofore exercising the powers of probate courts shall be taken and held to be the records, judgments and orders of the county judge, subject to the like amendment, enforcement and execution as though the same had been made and rendered by the county judge. Ch. 1629, Sec. 8, July 28, 1868.

2054. (1590.) Substitution of judge of circuit court for.

1. When To Be Substituted.—The judge of the circuit court, in case of the disqualification, absence, sickness or Ch. 154, Sec. 1. Jan. 8, 1848.

other disability of a county judge, is authorized to discharge all the duties appertaining to said judge in regard to the probate of wills, granting letters testamentary and letters of administration, appointing curators and guardians, and making all necessary orders in regard to the custody, preservation or sale of the estates of deceased persons.

Ch. 628, Sec. 2, Jan. 10, 1855.

2. Notification of Disqualification.—The county judge when disqualified shall notify the judge of the circuit court of his county of such disqualification; and in no instance shall any county judge act in any matters in which he is interested, and should he presume so to do, his acts shall be null and void.

Ch. 1876, Sec. 1, Feb. 17, 1877.

3. County Judge to Make Settlements with Circuit Judge.—The county judge shall, when he is executor, administrator, or guardian, make his settlements as such with the judge of the circuit court of his county, in the same manner and form as other executors, administrators, or guardians are required by law to make their settlements with the county judge.

Sec. 1591, Rev. Stat., 1892.

2055. (1591.) Appeals.—For appeals from the county judge as a court of probate: See Sections 1710 and 1711.

May appoint guardians for lunatics and require them to give bond.—See Sections 2629 and 2630.

Ch. 1981, Acts 1874, Sec. 5.

2056. (1592.) Fees.—The fees of the county judge as judge of probate shall be as follows:

For affidavit, writing and taking 100 words or less	$0 25
For every additional 100 words	15
Administering oath	10
Bond, drawing or approving	1 00
Certificate with seal	30
Citation, issuing	50
Decree or judgment, entering	75
Filing any paper required to be filed	5
Letters, issuing—	
Of administration	3 00
Of curatorship	3 00
Of executorship	3 00
Of guardianship	3 00
Rule, granting	50
Search of one year's standing, or less	10
For more than one year's standing	20
Settlements of administrators or guardians	2 00
Warrant of appraisement, issuing	50
Writing, drawing or recording any document not herein provided for, of 100 words or less	15
For every additional 100 words or less	10

For all other services same fees as circuit court clerk.

ARTICLE 3.

PROVISIONS RELATING TO HIM AS JUSTICE OF THE PEACE.

Sections.....2057-2060

2057. (1593.) Jurisdiction.—The county judge shall have original jurisdiction in all cases at law in which the demand or value of the property involved shall not exceed one hundred dollars. His territorial jurisdiction shall extend throughout the county.

Ch. 3889, Sec. 1, May 28, 1889; Ch. 1627, Sec. 23, Aug. 4, 1868.

2058. (1594.) Powers, practice and pleading. — In all civil matters, his powers, terms and duties shall be the same as those of a justice of the peace, and the rules of practice and pleading in his court, and in appellate proceedings therefrom, shall be the same as those established by law for justices of the peace courts.

Ib., Ch. 3888, Sec. 1, May 24, 1889.

2059. (1595.) Records.—Such judge shall keep separate dockets for all causes brought before him in his jurisdiction concurrent with that of a justice of the peace.

Ch. 1627, Sec. 24, Aug. 4, 1868.

2060. (1596.) Compensation.—He shall receive the same fees for like services as are allowed by law to justices of the peace.

Ch. 3888, Sec. 2, May 24, 1889.

ARTICLE 4.

PROVISIONS RELATING TO HIS JURISDICTION IN CASES OF FORCIBLE ENTRY AND UNLAWFUL DETENTION OF LANDS.

2061. (1597.) Jurisdiction.—The county judge shall have jurisdiction of proceedings relating to forcible entry and unlawful detention of lands, and this shall include actions of forcible entry and unlawful detainer and proceedings against delinquent tenants.

Ch. 3889, Sec. 1, May 28, 1889.

TITLE VI.

OF PROVISIONS APPLICABLE ONLY TO COURTS OF JUSTICES OF THE PEACE.

In their civil jurisdiction (incidentally affecting criminal matters).

Ch. 1. General provisions respecting. Section 2062
Oath. Section 2063
Bond. Section 2064
Seal. Section 2065
Districts. Sections 2066-2069
Terms. Sections 2070-2071
Dockets. Section 2072
Ch. 2. Jurisdiction. Sections 2073-2075
Ch. 3. Proceedings before trial. Sections 2076-2082
Ch. 4. Proceedings at and after trial. Sections 2083-2088
Foreclosure of mortgage. Section 2089
Removal of justice. Section 2090
Transfer to successor. Section 2091
Costs and fees. Section 2092
Ch. 5. Appellate proceedings from. Sections 2093-2097
Ch. 6. Forms. Section 2098

CHAPTER I.

GENERAL PROVISIONS.

2062. (1598.) General provisions respecting. — All the provisions of law which can be applied to courts of justices of the peace, or to any proceeding therein, or to any officer thereof, shall be applicable thereto in all cases except when they are expressly or impliedly restricted to courts other than justices of the peace courts, and except when they are inconsistent with the provisions of this title.

Nov. 28, 1828, Sec. 6.

2063. (1599.) Oaths. — Each and every justice of the peace shall, before he enters upon the duties of his office, take and subscribe an oath to faithfully perform the duties of his office, and shall file the same with the clerk of the circuit court.

Ch. 3724, Sec. 8, June 2, 1887.

2064. (1600.) Bond. — Each justice of the peace shall give bond in the sum of five hundred dollars, which shall be governed by the provisions governing bonds to be given by the clerk of the circuit court.

2065. (1601.) Seal.—Each justice of the peace shall provide himself with a seal, upon which shall be impressed around the margin the words, "State of Florida,..... County," and in the center ("Number) Justice's District," and it shall have nothing else thereon.

2066. (1602.) Number districts and boundaries. — The board of county commissioners of each county shall divide their respective counties into as many justice districts, not less than two, as they may deem necessary, and as near as practicable the limits of said districts shall be co-extensive with the limits of one or more election districts of the respective counties. Ch. 3722, Secs. 1, 2, June 3, 1887.

2067. (1603.) Evidence of.—The boundaries or limits of the said justice districts, so laid off and established, shall be spread upon the minutes of the county commissioners, and such minutes shall be conclusive evidence thereof. Ib., Sec. 3.

2068. (1604.) Enlargement of.—In all counties where there shall be any justice of the peace district in and for which no justice of the peace shall be elected, qualified or commissioned, the county commissioners of such county shall attach the territory of such justice of the peace district to the territory of some adjacent justice of the peace district which has a justice of the peace, and make it a part thereof by an order to be recorded in the minutes of the proceedings of such county commissioners, which territory shall thereafter, unless otherwise ordered by the board of county commissioners, be considered as part of the justice's district to which it has been attached; a copy of which order shall be posted at the court house of the county. Ch. 3893, Acts 1899, Sec. 1.

2069. (1605.) Alteration of. — If any new district be made, so that the boundaries of a district or districts existing at the time shall be abolished, or if any district shall be abolished, the county commissioners at the time of such abolition or obliteration, shall designate the district in which shall preside the justice who shall be successor to the justice presiding in the obliterated or abolished district or districts.

2070. (1606.) Terms.—Trial terms of such court shall be held on such day (to be not less than ten days after the rule day) as the judge or justice thereof shall designate therefor in the manner provided in the next section. Revised by Sec. 2, Ch. 1438, Acts 1895.

2071. (1607.) Written notice to be given. — Whenever the day of trial term shall be fixed upon for any such court Sec. 3, Ib.

by the judge or justice thereof, written notice of the same shall be made and given by such judge or justice to (and filed in the office of) the clerk of the circuit court of the county.

Ch. 2040, Acts 1875, Sec. 18.

2072. (1608.) Docket.—Every justice of the peace shall keep a docket book, in which he shall make fair and accurate entries of all causes brought before him, and a minute of all the proceedings, including the service and return of process, the appearance of such parties as may appear, the fact of trial, whether by the court or jury, the verdict of the jury or finding by the justice, the judgment, including damages and costs separately stated, the issuing of execution and to whom issued, with the date thereof and the return thereon, and a marginal memorandum of the items of all costs, including justice's fee, sheriff's or constable's fees, and witnesses' fees; which docket, or certified copy thereof, shall be evidence of the matters therein stated.

CHAPTER II.

JURISDICTION.

Jurisdiction. Sections.....2073-2074
No jurisdiction. Section..... 2075

JURISDICTION.

Ch. 2095, Sec. 1, Feb. 10, 1877.

2073. (1609.) In counties where no county court.—In counties where no county court is organized, justices of the peace shall have jurisdiction in the following actions:

1. In actions arising on contracts for the recovery of money only where the sum demanded does not exceed one hundred dollars.

2. In actions for damages for injury to rights pertaining to the person, or to personal or real property, when the damages claimed do not exceed one hundred dollars.

3. In actions for penalties not exceeding one hundred dollars.

4. In actions upon bonds conditioned for the payment of money not exceeding one hundred dollars, though the penalty exceeds that sum, the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as

it becomes due, when the installments do not exceed one hundred dollars each.

5. In actions upon judgments rendered in courts of justices of the peace or by justices or other inferior courts in cities; but no such action shall be brought in the same county within five years after the rendition of the judgment, except where the docket or record of such judgment shall be lost or destroyed.

6. To take and enter judgment on the confession of the defendant, when the amount confessed does not exceed one hundred dollars, exclusive of costs.

7. In actions for damages for fraud on sale, purchase or exchange of personal property, where the damages claimed do not exceed one hundred dollars.

8. Of proceedings in attachment, garnishment, replevin, enforcement of liens and distress for rent, when the amount of property involved does not exceed in value one hundred dollars.

The proceedings in all such cases shall be as provided in Title VII, Second Division, of these General Statutes.

9. To foreclose mortgages and enforce liens on personal property, when the debt secured does not exceed one hundred dollars. Ch. 3586, Sec. 1, Feb. 10, 1885.

2074. (1610.) Jurisdiction in counties where there is a county court.—In counties where there may be organized a county court, justices of the peace shall have jurisdiction in all the classes of cases set forth in the preceding section, where the amount or property involved shall not exceed fifty dollars in value.

2075. (1611.) No jurisdiction.—No justice of the peace shall have jurisdiction of a civil action— Ch. 2095, Sec. 2, Feb. 10, 1877.

1. In which the State is a party, excepting for penalties not exceeding one hundred dollars, or fifty dollars, as there may or may not be a county court in the county.

2. Nor where the title to or boundaries of real estate shall come into question. If it appear on the trial that title to or boundary of real estate is in question and such title or boundary shall be disputed by the defendant, the justice shall dismiss the action and render judgment against the plaintiff for the costs.

3. Nor a civil action for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction.

CHAPTER III.

PROCEEDINGS BEFORE TRIAL.

Commencement of suits. Sections ..... 2076-2078.
Pleadings. Section 2079
Offer to confess judgment. Section 2080
Depositions upon continuance. Section 2081
Procurement of evidence. Section 2082

COMMENCEMENT OF SUITS.

Ch. 2040, Sec. 3, Feb. 27, 1875.

2076. (1612.) Summons.—Every civil suit shall (unless otherwise specially provided for) be commenced by a summons issued by the justice.

Ib., Sec. 4, as affected by Sec. 1, Ch. 4384, Acts 1895.

2077. (1613.) Service of summons.—The summons shall be served by a sheriff or constable, but if such officers be disqualified or unable to act, or if neither can be conveniently found, by a person specially appointed in writing by the justice for that purpose.

Ch. 2040, Acts 1875, Sec. 5.

2078. (1614.) Return.—Proof of service may be made by affidavit of the person making the service, or by return of the officer signed by him, with the addition of his official title.

Ib., Sec. 10.

2079. (1615.) Pleadings.—No particular form of pleadings shall be required, but the plaintiff shall state in writing his cause of action, and the defendant his defences in writing, in a plain and direct manner, in such a way that any person of common understanding may know what is intended. Either party may demur to the pleading of his adversary, or any part thereof, when it is not sufficiently plain to enable him to understand it, or when it contains no cause of action or defence sufficient in law.

Ib., Sec. 11.

2080. (1617.) Offer to confess judgment.—The defendant may, before answering, make an offer to allow judgment to be taken against him for an amount to be stated in such offer, with costs. The plaintiff shall thereupon, and before any proceedings shall be had in the action, determine whether he will accept or reject such offer. If he accepts the offer and give notice thereof to the justice, the justice shall note the offer and the acceptance thereof, and render judgment accordingly. If notice of acceptance shall not be given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified

in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer.

2081. (1618.) Deposition upon continuance.—On application for the adjournment or continuance of a cause, the depositions of such witnesses as may be in attendance may be taken by the justice, at the request of either party; and such depositions, signed by the witness and attested by the justice, shall be filed and may be used by either party on the trial, as if such testimony were given at the trial. Ib., Sec. 8

2082. (1619.) Procurement of evidence.—Every justice of the peace shall have the right to issue subpoenas for witnesses and commissions to take testimony upon interrogatories. Ib., Sec. 7.

The fine against a witness for non-attendance in a justice's court shall not exceed twenty dollars.

CHAPTER IV.

PROCEEDINGS AT AND AFTER TRIAL.

Manner of trial. Section..... 2083
The jury. Section..... 2084
Verdict and judgment. Section..... 2085
Judgment upon confession. Section..... 2086
Docketing judgment in circuit court. Section..... 2087
Executions. Section..... 2088
Foreclosure of mortgages. Section..... 2089
Removal of justices. Sections.....2090-2091
Costs and fees. Section..... 2092

2083. (1620.) Manner of trial.—Every trial shall be before the justice without a jury unless, in cases involving more than five dollars, either party shall demand a jury. At the time of making such demand the party making it shall deposit with the justice three dollars to be used in paying the jury, and the said sum shall be taxed as costs. Ib., Sec. 32.

2084. (1621.) The jury.—

1. Procurement Of.—When a jury is required as aforesaid, it shall be the duty of the justice of the peace to direct the officer, by a venire under the hand and seal of the justice, forthwith to summon six disinterested persons who are qualified to be jurors. They shall be summoned from the neigh- Ib., Secs. 32, 33.

borhood of the place, as far as may be, on or before the day appointed for the trial.

Ib., Sec. 34.

2. Compelling Attendance Of.—Every person duly summoned to serve as a juror in the court of a justice of the peace who shall fail to attend the said court without a good and sufficient excuse, to be judged of by the justice of the peace, shall pay a fine of three dollars, and an execution for the amount of the said fine and costs shall be issued against the goods and chattels of such defaulting juror, to be levied as in other cases of execution, or the justice may proceed as in cases of contempt.

Ib., Sec. 32

2085. (1622.) Verdict and judgment.—When the jury has returned a verdict in the cause the justice shall enter up judgment thereon forthwith agreeably to said verdict.

Ib., Sec. 19.

2086. (1623.) Judgments upon confession. — Judgment upon confession before a justice of the peace may be entered with or without the service of summons for any indebtedness or for damages, which confession shall be signed in the presence of the justice, and shall show the cause of action or indebtedness for which it is given, and no writ of error or appeal shall be allowed to the party confessing the same.

Ib., Sec. 43.

2087. (1624.) Docketing judgments in circuit courts.—A justice of the peace, on demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof, which may be filed and docketed in the office of the clerk of the circuit court of the county where the judgment was rendered, or any other county in this State, within four years after the rendering of such judgment. The time of the receipt of the transcript by the clerk shall be noted thereon, and a memorandum of the judgment entered in the docket of the circuit court provided for such judgments; and from that time the judgment shall be a judgment of such circuit court, and enforced in like manner as other judgments of the circuit court. No judgment rendered by a justice of the peace shall be a lien on real estate until a transcript thereof be filed in the office of the clerk of the circuit court, and docketed.

Constitutional.—Bucki v. Willard, 16 Fla., 330. Can circuit court set aside execution issued on such transcript?—Ib.

Ch. 2095, Sec. 1, Feb. 10, 1877.

New trial. — Justices of the peace shall have power to grant new trials in cases tried before them.

2088. (1626.) Executions.—

Ch. 2040, Sec. 40, Feb. 27, 1875.

1. On Justice of the Peace Judgments.—Execution issued by justices of the peace shall be directed to the sheriff or any

constable of the county, and shall have full force throughout the same; and if in any case it shall be necessary to send an execution to some other county to be levied upon the property of the defendant, it shall be the duty of the plaintiff, or his agent, to present the same to a justice of the peace or the county judge residing in the county to which the same is carried, and the said justice or county judge shall endorse thereon an authority to the sheriff or any constable of the county to levy the same, which shall possess the same force as if it had been originally issued by a justice of the peace of said county.

2. On Judgments Docketed with the Clerk.—If the judgment be docketed by the clerk of the circuit court, the execution shall be issued by him to the sheriff of the county, and have the same effect and be executed in the same manner as other executions of the circuit court.

3. Sale of Personal Property.—The officer shall be required to give fifteen days' notice of the sale of all personal property levied on, by a written or printed advertisement, posted in three or more public places in the vicinity of the place of sale, and all sales of such property shall be made at the justice's place of holding his court, and the property shall be in full view at the time of sale, except in the case of ponderous articles, or articles the removal of which would create exorbitant cost. Ib., Sec. 41.

2089. (1627.) Foreclosure of mortgages. — Whenever any person holds a debt or demand within the jurisdiction of a justice of the peace, secured by a mortgage or other written lien upon personal property, he may, upon commencing suit in a justice's court upon his debt or demand file therewith his mortgage or written lien; and upon recovery of judgment for his debt or demand the same shall operate as a foreclosure of his mortgage upon the property therein described and his lien shall be enforced by execution as in other cases, except that he shall enforce his judgment against the property mortgaged or upon which he has a lien, before he can resort to other property of the defendant. The execution in such cases shall direct the officer to levy upon the mortgaged property first if the same can be found, but if the same cannot be found or a sufficiency thereof, to levy upon any other property subject to execution. Ch. 3536, Secs. 1, 2, Feb. 16, 1885.

In suits of this character, the defendant may make his defence upon legal and equitable grounds, and third persons may interpose claims to the property involved in such suits, as in other suits.

2090. (1628.) Removal of justices.—If any justice of the peace of this State shall on indictment, be convicted of any Feb. 14, 1885, Sec. 2.

offense against the penal laws of this State, in addition to the sentence and penalty now imposed by law, said justice shall be removed from his said office on the conviction aforesaid.

Ch. 3927, Sec. 1, May 27, 1889.

2091. (1629.) Transfer to successor. — Whenever any justice of the peace shall resign or be removed from office, or his term of office shall expire, it shall be his duty to turn over to his successor forthwith all dockets, books, papers and effects in his possession pertaining to his office, and all proceedings previously commenced shall continue without interruption; and if any person so resigning or removed, or whose term of office has expired, shall wilfully fail or refuse to deliver such dockets, books, papers and effects as aforesaid, he shall be liable to any person injured for all damages, costs and expenses occasioned thereby. And when any justice of the peace shall die, it shall be the duty of his executor or administrator or other person having the same in charge to turn over to the successor aforesaid all dockets, books, papers and effects pertaining to such office; and if such justice of the peace or such executor or administrator, or other person, shall not so deliver the same, the clerk of the circuit court shall issue a precept to the sheriff requiring him to make search for and take possession of such dockets, books, papers and effects, and bring them forthwith to the said clerk's office; and it shall be the duty of the sheriff to execute such precept and make return of his doings thereon.

Ch. 2040, Sec. 45, Feb. 27, 1875.

The clerk, upon receipt of such dockets, books, papers, etc., shall immediately turn them over to the proper justice of the peace. All proceedings commenced before the former justice shall proceed without interruption before his successor; and the successor shall, on demand of any person entitled thereto, issue execution upon any judgment remaining unsatisfied upon said docket, at any time within two years from the rendition of the judgment.

2092. (1630.) Costs and fees.—

Ib., Sec. 5.

1. Security For.—Any justice of the peace, in any action or proceeding before him, may, before or after issuing process, require the plaintiff to give security for the costs, and the person becoming security shall sign and leave with the justice a memorandum to the effect following: "A. B., plaintiff, against C. D., defendant. I hereby agree to be security for all costs which may be recovered against the plaintiff in this case."

Such surety shall be liable to pay all costs that may be recovered against the plaintiff in a civil suit before the justice,

or on appeal or writ of error, and execution therefor may be issued as well against the surety as against the plaintiff.

2. Amount Of.—The fees of a justice of the peace shall be the same as those of the clerk of the circuit court for similar services.

CHAPTER V.

APPELLATE PROCEEDINGS.

Writs of error. Section..... 2093
Certiorari. Section..... 2094
Sci. fa. ad aud. errors. Sections.....2095-2096
Appeal after death of justice. Section..... 2097

2093. (1631.) Writs of error.—Writs of error from justice of the peace courts shall be governed in all respects by the provisions relating to writs of error in Chapter XXV, Title I, Second Division of these General Statutes. Bills of exceptions may be taken in accordance with the practice in the circuit court, and with like effect.

Ch. 3584, Acts 1885, Sec. 1.

2094. (1632.) Certiorari.—

1. Power and Limit.—The clerk of the proper appellate court shall have power, upon the application of any party before a justice of the peace, who may be dissatisfied with any judgment in which he was a party in said jurisdiction, to issue writs of certiorari to said justice of the peace at any time within six months after the rendition of the said judgment.

Feb. 27, 1840, Sec. 1.

2. Supersedeas.—Said writ of certiorari shall in no case operate as a supersedeas, unless the party applying for the same, if the plaintiff in the court below, shall first pay all costs which have accrued in and about said suit and enter into bond with one or more sureties to be approved by the said clerk, conditioned for the payment of the costs which may accrue in consequence of the obtaining of said writ of certiorari; and if the defendent in the court below, shall pay all costs which have accrued in and about said suit, and enter into bond with one or more sureties to be approved by the said clerk, conditioned for the payment of the condemnation money and all damages and costs which may accrue in consequence of obtaining said writ of certiorari.

If the plaintiff in certiorari succeeds, he shall recover back the said costs paid by him, and they shall be taxed in the bill of costs.

Nov. 28, 1828, Sec. 55.

Feb. 12, 1832, Sec. 1.

3. Causes for Reversal.—No judgment of any justice shall be reversed on certiorari when the subject matter shall appear to have been within the jurisdiction of the justice, when there has been a regular summons and service thereof, when there shall have been proper parties, and when proper entries shall have been made on the justice's record; nor shall such judgment be reversed for any cause, in law or in fact, unless it appear on the face of such record.

4. Assignmnt of Errors, and Trial.—All cases of certiorari shall be tried upon the record sent up from the court below; and in all such cases it shall be the duty of the plaintiff in certiorari to assign his errors and file them with the clerk of the court on or before the first day of the term to which the case is made returnable; and every case brought up as aforesaid shall stand for trial at the term to which it is returned.

Feb. 10, 1832, Sec. 9.

2095. (1273.) Sci. fa. ad aud. errores. — The clerk, or judge if there be no clerk, issuing a writ of error shall issue to the defendant in error a scire facias to hear errors, which shall be made returnable with the said writ of error, and shall be served twenty-five days before the return day.

Writ should be directed to sheriff.—Sammis v. Wightman, 25 Fla., 547; 6 So. Rep. 173.

2096. (1274.) Manner of service.—

Nov. 12, 1828, Sec. 9.

1. Personal Service.—Such scire facias shall be served on all defendants in error resident in this State as other writs are served.

Feb. 17, 1833, Sec. 1.

2. Upon Non-Residents and Absentees.—If the defendant in error be a non-resident of the State, or be not in the State, service of the sci. fa. may be made upon his attorney in the court below, or upon his legally authorized agent, or notice may be given by publishing the sci. fa. in a newspaper published in the county where the appellate court will sit to hear the case, once each week for four successive weeks.

Ch. 2040, Sec. 63, Feb. 27, 1875.

2097. (1635.) Appeal, etc., upon death, etc., of the justice.—If any justice of the peace shall die, resign, be removed, or his term shall expire, after judgment and before appeal or writ of error, and before the time for appealing or taking a writ of error expires, any party may appeal or take a writ of error from such judgment within sixty days after the deposit of the docket and papers of the said justice with his successor; and in such case the appeal or writ of error may be made and perfected before his successor in the

same manner as it might have been before him; and the successor shall make a certified copy of the docket, and file the same, together with all the papers or a transcript thereof (if appellate proceedings be by writ of error to the circuit court) pertaining to the case, in the appellate court, and the court may proceed thereon as though the return had been made by the justice rendering the judgment.

CHAPTER VI.

FORMS.

2098. (1636.) Forms in civil proceedings.—The following forms may be used in civil proceedings before justices of the peace:

1. Summons.

State of Florida,
.....County.

In the name of the State of Florida. To the sheriff or any constable of said county:

You are hereby commanded to summon....., to appear before me at.....on the .....day of....., A. D. 19..., to answer .....upon a claim in the sum of..... dollars and.....cents; herein fail not, or judgment will be given against him by default.

Given under my hand and official seal this..... day of....., A. D. 19...

.....
Justice of the Peace.

2. Subpoena.

State of Florida,
.....County.

In the name of the State of Florida. To the sheriff or any constable of said county:

You are hereby required to summon..... .....personally to be and appear before me at ....., on the.....day of....., A. D. 19...,to testify in behalf of..... in a suit pending in my said court, wherein.....

is plaintiff and.....is defendant; and herein to fail not under penalty of the law.

Given under my hand and seal this.....day of ....., A. D. 19...

.....
Justice of the Peace.

3. Attachment affidavit.

State of Florida, }
.....County. }

Before the subscriber, a justice of the peace in and for said county, personally came A. B., who, being personally sworn, says that C. D. is indebted to him, the said A. B., in the sum of.....dollars and.....cents, and that the same is actually due, and that affiant has reason to believe that (here state one or more of the grounds mentioned in the statute).

Sworn to and subscribed before me this.....day of....., A. D. 19...

.....
Justice of the Peace.

4. Attachment bond.

State of Florida, }
.....County. }

Know all men by these presents that we, A. B. and .....and.....are held and firmly bound unto C. D. in the sum of.....dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this.....day of....., A. D. 19...

The condition of the above obligation is such that whereas the said A. B. has this day applied for an attachment against the lands, tenements, goods and chattels of C. D., for the sum of.....dollars and..... cents; now if the said A. B. shall well and truly pay all costs and damages, the defendant, the said C. D., may sustain in consequence of plaintiff's improperly suing out said attachment, then this obligation to be void; else to remain in full force and virtue.

Taken before and approved by me.

....(Seal.)
Justice of the Peace. .....(Seal.)
.....(Seal.)

5. Affidavit in replevin.

State of Florida,
.....County.

A. B., being duly sworn, says that he is lawfully entitled to the possession of the following property, to-wit: (here naming it as particularly as may be). That said property is detained by C. D. within.....Justice District of this county, who has the same in his possession. That said property has not been taken for any tax, fine or assessment levied by virtue of any law of this State, nor seized by virtue of an execution or attachment against the property of said A. B. liable to execution. That the actual value of said property is.....dollars.

Sworn to and subscribed before me this..... day of....., A. D. 19...

.....
Justice of the Peace.

6. Replevin bond.

State of Florida,
.....County.

Know all men by these presents that A. B. and..... .....and..... are held and firmly bound unto C. D. in the sum of..... dollars, for the payment whereof well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this.....day of..... A. D. 19...

The condition of the above obligation is such that whereas the said A. B. has this day begun an action of replevin to recover possession of personal property, to-wit: ("One gray horse, etc.") of the value of..... dollars. Now, therefore, if the said A. B. shall diligently prosecute the said action and return the said property to the said C. D., if return thereof shall be adjudged, and shall pay him such sum as may for any cause be recovered against said A. B., then this obligation to be void.

Executed in presence of

.....(Seal.)
.....(Seal.)
.....(Seal.)

7. Claim affidavit.

State of Florida,
.....County.

Before the subscriber, a justice of the peace in and for said county, personally came....., who,

being duly sworn, says that the following property, to-wit: ..... levied upon by ..... sheriff (or constable) in and for said county, by virtue of an execution (or attachment) in favor of..... against ..... belongs to him, the said deponent.

Sworn to and subscribed before me this..... day of....., A. D. 19...

.....
Justice of the Peace.

8. Claim bond.

State of Florida, }
.....County. }

Know all men by these presents that we....., and .....are held and firmly bound unto.....in the sum of .....dollars, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed this.....day of....., A. D. 19...

The condition of this obligation is such that whereas ....., sheriff (or constable) in and for said county, by virtue of an execution (or attachment) in favor of .....against ..... and the above bounden.....has interposed a claim to said property; now, if the said..... .....shall deliver said property upon the demand of said officer, if the same shall be adjudged to be the property of the defendant in execution, and pay to the plaintiff all damages which the jury on the trial of the right of property may find in his favor, if it shall appear to the jury that such claim was interposed for the purpose of delay, then this obligation to be void, else to remain in full force and virtue.

Executed in the presence of

.....(Seal.)
.....(Seal.)
.....(Seal.)

9. Forthcoming bond.

State of Florida, }
.....County. }

Know all men by these presents that we..... ..... and ..... are held and

firmly bound unto.....in the sum of .....dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed, this.....day of....., A. D. 19...

The condition of this obligation is such that whereas .....a constable in and for said county, by virtue of an execution in favor of..... against.....has levied upon the following property: (here describe the property), and..... .....wishes to replevy the same; now, if the said.....shall have the said property forthcoming at.....on the .....day of....., A. D. 19.., then this obligation to be void; else to remain in full force and virtue.

.....(Seal.)
.....(Seal.)

10. Writ of garnishment.

State of Florida, }
.....County. }

In the name of the State of Florida:

To.....

You are hereby required personally to be and appear before a justice's court to be holden at..... on the.....day of....., A. D. 19.., then, and there, in a certain matter wherein..... .....is plaintiff and..... is defendant, to set forth upon oath what goods and chattels, rights and credits, money or effects were in your hands, custody or control, at the time of the service of this notice, or since, belonging to the said defendant, and in what you are indebted to him; herein fail not.

Amount claimed by plaintiff, ...dollars and.....cents.

Given under my hand this.....day of....., A. D. 19...

.....
(L. S.) Justice of the Peace.

11. Venire for jury.

State of Florida, }
.....County. }

To the sheriff or any constable of any county: In the name of the State of Florida:

You are required forthwith to summon six disinterested persons, qualified to be jurors, to appear before me at my office at.....in said county, on the..... day of.....:, A. D. 19.., to form a jury for the trial of an action between A. B., plaintiff, and C. D., defendant, and make due return of this writ. Dated this .....day of....., A. D. 19...

(The venire should be read to each person summoned as a juror.)

12. Oath to jury.

You, and each of you do solemnly swear that you will well and truly try this issue, wherein..... is plaintiff, and.....is defendant, and a true verdict give according to the evidence. So help you God.

13. Oath to jury in claim cases.

You and each of you do solemnly swear that you will well and truly try this claim interposed by..... to the property levied upon by virtue of an execution in favor of ..... against ..... and a true verdict give according to the law and the evidence, and that you will also give to the plaintiff such damages as may appear reasonable and right, in case it should appear that such claim was interposed for delay. So help you God.

14. Oath to witnesses.

You do solemnly swear that the evidence you shall give on this issue shall be the truth, the whole truth, and nothing but the truth. So help you God.

(If the witnesses desire, the word "affirm" may be used instead of "swear," and the words, "So help you God," may be omitted.)

15. Confession of judgment.

State of Florida, }
..... County. }

A. B. against C. D.

I have confessed judgment before ..... a justice of the peace of the county of ..... for ..... dollars and ..... cents damages due to A. B., and the said justice is authorized to enter judgment against me in favor of said A. B. for said sum and costs.

16. Money judgment.

Judgment is hereby rendered against C. D., defendant in favor of A. B., plaintiff, for the sum of .....

dollars and .....cents, damages and.....
.....dollars and ..... cents costs, this, the.....
day of ..... A. D. 19.....

.....
Justice of the Peace.

17. Execution on money judgment.

State of Florida, }
..... County. }

To the sheriff or any constable of said county:

Whereas judgment against C. D. in the sum of .....
..... dollars and ..... cents damages,
and ..... dollars and ..... cents, costs
of suit, was recovered before me on the ..... day of
....., A. D. 19...., by A. B.:

Therefore, in the name of the State of Florida, you are commanded to levy on the goods and chattels, lands and tenements of said C. D., and make sale thereof according to law, to the amount of said damages, costs and interest thereon, together with the costs of this execution, and your fees hereon, and make return hereof when satisfied, or when duly required, with your doings hereon.

Given under my hand and official seal this .....
day of ....., A. D. 19....

.....
(L. S.) Justice of the Peace.

18. Execution in replevin.

State of Florida, }
..... County. }

To the sheriff or any constable of the county of .....

Whereas, judgment was rendered against C. D. on the
..... day of ..... A. D. 19...., in
favor of A. B., that the said A. B. recover the possession of certain personal property, to-wit: (One gray horse, of the value of ..... dollars; one double wagon, of the value of ..... dollars, or any other property, affixing the value of each article as found by the court or jury), and for the sum of ..... dollars damages, and for ..... dollars and ..... cents, costs of suit; therefore, in the name of the State of Florida, you are hereby required to deliver the said property forthwith to the said A. B., unless the same has already been delivered; and if the said property or any article thereof cannot be delivered by you on account of your failure to find the same, you make the value thereof as herein stated, by levy

and sale of the goods and chattels of the said C. D.; and you are further required to levy upon the goods and chattels of the said C. D., and make sale thereof according to law, to the amount of the said damages and costs, with interest thereon, and the costs of this execution and your fees hereon, and make due return of your doings hereon when you have fully executed and satisfied the same.

Given under my hand and official seal this the ..... day of ....., A. D. 19....

.....

(L. S.) Justice of the Peace.

TITLE VII.

OF SPECIAL STATUTORY PROCEEDINGS AT LAW.

CHAPTER 1.—Of attachment. Sections.....2099-2129
2.—Of garnishment. Sections.....2130-2151
3.—Of forcible entry and unlawful detainer. Sections....2152-2170
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CHAPTER I.

OF ATTACHMENTS.

ARTICLE 1.—Right to. Section..... 2099
2.—From what courts to issue. Section..... 2100
3.—Grounds of. Sections.....2101-2104
4.—Procurement of. Sections.....2105-2110
5.—Effect of, upon maturity of debt. Section..... 2111
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8.—Return of property to defendant. Sections.....2116-2118
9.—Sale of personal property, under pending suit. Section 2119
10.—Dissolution of. Sections.....2120-2122
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ARTICLE 1.

RIGHT OF ATTACHMENT.

2099. (1635.) Right defined.—Any creditor may have an attachment at law against the goods and chattels, lands and tenements of his debtor under the circumstances and in the manner hereinafter provided. (For attachments against stock of debtors in corporations, see Section 1643.)

Leviable on land fraudulently conveyed.—McClellan v. Solomon, 23 Fla., 437; 2 So. Rep. 825.

ARTICLE 2.

FROM WHAT COURT TO ISSUE.

2100. (1636.) Determined by amount claimed.—Such attachment shall issue from the court which may have jurisdiction of the amount claimed by the creditors. Feb. 15, 1834, Sec. 2.

But if the property to be attached is being actually removed from the State, and the creditor shall be unable to obtain process from the circuit or county court, as the case may be, in time to prevent such removal, any justice of the peace or county judge may issue the writ, making the same returnable to the circuit or county court, as the case may be, and shall immediately send all papers in the case to the clerk of the court to which the writ is made returnable. Ch. 250, Sec. 1, Jan. 13, 1849.

ARTICLE 3.

GROUNDS OF ATTACHMENT.

When debt is actually due. Section....2101
When debt is not actually due. Section....2102
Against executor or administrator. Section....2103
In aid of foreclosure. Section....2104

2101. (1637.) Attachment when debt is actually due. The creditor may have an attachment upon a debt actually due to him by his debtor, whenever the debtor— Ch. 998, Acts 1859, Sec. 1.

1. Will fraudulently part with his property before judgment can be obtained against him.

2. Is actually removing his property out of the State of Florida.

Removal of part of property out of State, not within spirit of statute.—Haber v. Nasits, 12 Fla., 589.

3. Is about to remove his property out of the State of Florida.

4. Resides beyond the limits of the State of Florida.

Allegation of, not inconsistent with allegation 10.—Tanner & Delaney Co. v. Hall, 22 Fla., 391.

5. Is actually moving himself out of the State of Florida.

6. Is about to move himself out of the State of Florida.

7. Is absconding.

8. Is concealing himself.

9. Is secreting his property.

10. Is fraudulently disposing of his property.

Declaration of debtor as evidence. Evidence of acts and declarations should not be too remote.—Hardee v. Langford, 6 Fla., 13.

Ch. 1101, Sec. 2, Feb. 14, 1861.

11. Is actually removing himself beyond the limits of the judicial circuit in which he resides, or

12. Is about to remove himself out of the limits of such judicial circuit.

"Actually due" defined.—Zinn v. Dzialynski, 13 Fla., 597. Validity of joinder with proceedings under Section 2103. Effect of such joinder when one invalid.—Tanner & Delaney Co. v. Hall, 22 Fla., 391. Fraudulent disposition. —Attachment lies for against a mortgagor of merchandise under circumstances stated.—Eckman v. Munnerlyn, 32 Fla., 367; 13 So. Rep. 922.

2102. (1638.) Attachment when debt is not actually due. Any creditor may have such attachment upon a debt not due, whenever the debtor—

Amended by Ch. 5257, Acts 1903.

1. Is actually removing his property beyond the limits of the State.

2. Is fraudulently disposing of his property for the purpose of avoiding the payment of his just debts or demands.

Construed—proof required; determination of clerk not concluded.—Tanner & Delaney Co. v. Hall, 22 Fla., 391.

3. Is fraudulently secreting his property for such purpose.

2103. (1639.) Attachments against executors and administrators.—Whenever any executor or administrator resides or has removed beyond the limits of the State and has no legally authorized and publicly known agent in this State (see Section 1405), and there are assets of the testator or intestate in the State, any person who has a debt or demand

Feb. 15, 1834, Sec. 4.

against the estate of the deceased may take out an attachment against such assets.

2104. (1640.) In aid of foreclosures on personal property.—Any creditor who may be commencing or who may have commenced a suit to foreclose a mortgage on personal property, the possession of which has remained in the debtor, may have an attachment against such property, whenever he shall make an affidavit sworn to by himself or agent and file the same in the court in which proceedings are being had, that he has reason to believe and does believe— Dec. 11, 1824, Sec. 6. Revised.

1. That said property or part of same will be concealed or disposed of so that it will not be forthcoming to answer a judgment or decree upon foreclosure.

2. That said property or part of same will be removed beyond the jurisdiction of said court.

3. That said property or part of same is of a perishable character and is being used and consumed by the mortgagor or other parties.

ARTICLE 4.

PROCUREMENT OF ATTACHMENT.

Affidavit. Sections.....2105-2109
Bond. Section..... 2110

2105. (1641.) Affidavit.—Before any attachment shall issue in any of the foregoing cases, the plaintiff shall file in the court from which he desires the attachment an affidavit, sworn to by himself, his agent or attorney.

Affidavit.—Need not recite giving of the bond.—Tanner & Delaney Co. v. Hall, 22 Fla., 391. Before clerk of circuit court not in his county, void.—Ib. Need not be entitled in cause.—West v. Woolfolk, 21 Fla., 189. On information and belief bad.—Ross v. Steen, 20 Fla., 443.

2106. (1642.) Attachment when debt is actually due. In cases where the debt is actually due, such affidavit shall state the amount of the debt or the sum demanded, that the same is actually due, and that affiant has reason to believe in the existence of one or more of the special grounds hereinbefore enumerated in Section 2101, stating specifically such special ground or grounds. Ch. 998, Sec. 1. Dec. 20, 1859.

Allegation of "reason to believe" issuable—facts supporting such allegation.—Meinhardt v. Lilienthal, 17 Fla., 501.

Feb. 14, 1835, Sec. 2.

2107. (1643.) Attachment when debt is not actually due.—In cases where the debt is not actually due, such affidavits shall state the amount of the debt or demand; that the same is actually an existing debt or demand; and the existence of one or more of the special grounds hereinbefore enumerated in Section 2102, stating specifically such special ground or grounds.

In addition, the plaintiff shall produce before the officer granting such attachment proof, by affidavit (other than his own) or otherwise, satisfactory to such officer, of the existence of such special ground.

Feb. 15, 1834, Sec. 40.

2108. (1644.) Attachment against executors and administrators.—In cases of attachment against executors and administrators, such affidavit shall state the amount of the debt or sum demanded, that the same is an actually existing debt or demand, and the existence of the special grounds enumerated in Section 2103.

Dec. 11, 1824, Sec. 6.

2109. (1645.) Attachment in aid of foreclosure.—In cases of attachments in aid of foreclosure of mortgages on personal property such affidavit shall describe specifically the property upon which the mortgage exists, and shall state that a bill has been filed or other suit brought to foreclose said mortgage, the amount of the debt or demand secured by such mortgage, that the same is actually due, and that affiant has reason to believe in the existence of one or more of the special grounds enumerated in Section 2104. The original mortgage, or a certified copy thereof, shall be attached to the affidavit.

Feb. 15, 1834, Sec. 10.

2110. (1646.) Bond.—No attachment shall issue until the person applying for same, his agent or attorney, shall enter into bond, with at least two good and sufficient sureties, payable to the defendant, in at least double the debt or sum demanded, conditioned to pay all costs and damages which the defendant may sustain in consequence of the plaintiff's improperly suing out said attachment. Only one surety shall be required when such bond is executed by a lawfully authorized surety company as a surety thereon.

Any bond taken in cases of attachment shall not on account of any informality in the same be adjudged void as against the obligors, nor shall they be discharged therefrom although the attachment may be dissolved by reason of such informality.

Bond, Form and Construction Of.—Amount demanded need not appear on face of.—Strong v. Lake Weir, etc., 25 Fla., 765; 6 So. Rep. 882. Exceed

ing double amount of debt good.—Tanner & Delaney Co. v. Hall, 22 Fla., 391; Gallagher v. Cogswell, 11 Fla., 127. "Improperly" construed.—Steen v. Ross, 22 Fla., 480. Joint bonds sufficient.—Baars v. Gordon, 21 Fla., 25. Need not be entitled in cause.—West v. Woolfolk, 21 Fla., 189. Must appear in, that it was executed by plaintiff, his agent or attorney.—Work v. Titus, 12 Fla., 628. Subsequent ratification sufficient.—Pollock v. Murray, 38 Fla. 105; 20 So. Rep. 815. Must be double sum demanded, including interest specified.—Ib. Execution, obligors and sureties.—Agent requires authority under seal to execute.—Forbes v. Porter, 25 Fla., 362; 6 So. Rep. 62. Bond of corporation requires corporate seal.—Tanner & Delaney Co. v. Hall, 22 Fla., 391. Agent cannot sign as principal and surety.—Marshall v. Ravisie, 22 Fla., 583. Signers with plaintiff are sureties, although not so called in bond.—Baars v. Gordon, 21 Fla., 25. Executed in partnership name, when good.—Ross v. Steen, 20 Fla., 443; Jeffries v. Coleman, 20 Fla., 536. Attorney at law may sign as principal or on behalf of others.—Cunningham v. Tucker, 14 Fla., 249; Simpson v. Knight, 12 Fla., 144. But not as surety.—Sedgwick v. Dawkins, 15 Fla., 572. Sureties good and sufficient if both together worth penalty.—May v. Gamble, 14 Fla., 467. Executed by agent bonding himself and not his principal, sufficient.—Conklin v. Goldsmith, 5 Fla., 280. Evidence of approval by clerk.—West v. Woolfolk, 21 Fla., 189.

Praecipe not necessary for procurement of attachment; only the filing of affidavit and bond.—Simpson v. Knight, 12 Fla., 144. When attorneys fees not allowed in suits on attachment bonds.—Gonzales v. DeFuniak, etc., Co., 41 Fla., 471; 26 So. Rep. 1012.

Surety Companies.—Surety and fidelity companies are accepted as surety on attachment bonds. See Section 2788.

ARTICLE 5.

EFFECT OF ATTACHMENT UPON MATURITY OF DEBT.

2111. (1647.) Causes debt not due to mature.—In cases of attachment for debt not due, under Section 2102, the existence of one or more of the special grounds assigned, and in case of attachment against executors or administrators for a debt not due, the existence of all the grounds assigned, shall cause the debt to become due, and the plaintiff in attachment may proceed upon a debt falling due upon a day before the institution of the suit.

ARTICLE 6.

WRITS IN ATTACHMENT.

Form of. Section.....2112
Return of. Section.....2113
Territorial scope of. Section.....2114

2112. (1648.) Form of.—

Ib., Sec. 2.

1. Generally.—The writ of attachment shall be directed to the sheriff, or other proper officer, commanding him to attach and take into custody so much of the lands, tenements, goods and chattels of the party against whose property the writ is issued as will be sufficient to satisfy the debt or sum demanded, with costs.

2. In Aid of Suits to Foreclose.—In suits to foreclose mortgages, the writ shall describe the property, and command the officer to take and hold such property, or so much thereof as can be found sufficient to satisfy the debt to be foreclosed.

2113. (1649.) Return of writ.—The writ shall be returnable when fully executed; and if no property be found, shall be returned by the officer when he shall be convinced that no property can be found; and if property be seized under the writ, it shall be returned when the property seized shall have finally passed from the lien of said writ and the control of the officer levying the attachment. At the time of each action taken under said writ, the officer shall endorse such action thereon.

Effect of non-return upon officer.—Dowling v. Bowden, 25 Fla., 712; 6 So. Rep. 765.

2114. (1650.) Territorial scope of.—

Ch. 3721, Sec. 2, May 19, 1887.

1. When Property in County Other Than Where Suit Is Brought.—When, in any proceeding in attachment, the plaintiff, or someone in his behalf, shall, in addition to the affidavit in attachment proceedings, make affidavit that the defendant has real or personal property in some county of this State other than the one in which said proceedings were instituted, a writ of attachment, original or ancillary, as the case may be, shall be issued and directed to the sheriff of said county where said property is as aforesaid; and said officer shall execute said writ and hold the property levied on by virtue thereof subject to the order of the court from which said writ emanated, which said court shall have the power to order the delivery thereof to the sheriff or other proper officer of the county where the said proceedings were instituted, or order said officer so executing the writ to hold and dispose of the same in his county according to law as in other cases.

And when any real property is levied upon by virtue of this section, it shall be the duty of the officer levying said writ to file a written notice of said levy with the clerk of the cir-

cuit court for the county in which said property is situated, which notice shall contain a description of the property so levied upon, and the clerk shall record said notice in a book kept for the record of foreign judgments, for which he shall receive a fee of twenty-five cents, and said record shall be notice to all persons of said levy; and in cases of the dissolution of the attachment or dismissal of the suit, or for any cause the property ceases to be bound by said attachment, upon due proof thereof the clerk shall note such fact on the record of the levy.

2. When Property Is Removed from County Pending Levy of Writ.—When personal property of the defendant is situated in any county at the time of beginning of an action of attachment in such county and shall be removed from such county pending such action, it shall be the duty of the officer to whom the writ is addressed and delivered at once to make his return of the fact of the removal of such property aforesaid, and the plaintiff in such suit may make affidavit stating to what county or counties he believes the property has been removed, whereupon an alias writ shall issue, addressed to the sheriff of such last named county, or one such writ addressed to the sheriff of each county to which such property, or a portion thereof, has been removed, who shall, upon receipt of such writ, take possession of said property and deliver it to the proper officer of the court from which such writ was issued, and make return of said writ and his doings in the premises to said court, and the proceedings shall be thereafter as in other actions of attachment. Ch. 3245, Secs. 1, 2, Feb. 22, 1881.

All questions as to the title of such property shall be adjudicated in the county in which the suit was brought, unless the court shall change the venue.

ARTICLE 7.

EFFECT OF LEVY OF WRIT.

2115. (1651.) Lien created.—The levy of a writ of attachment shall not operate to dispossess the tenant of any lands or tenements, but a levy upon real or personal property shall bind the property attached, except against preexisting liens; and levies upon the same property under successive attachments shall have precedence as liens in the order in which they are made. A levy shall, however, bind real estate as against subsequent creditors or purchasers, Feb. 17, 1833, Sec. 9.

only from the time of the record by the clerk of the circuit court in the lien book of a notice of the levy and a description of the property levied upon.

Judgment lien relates back to attachment lien.—McClellan v. Solomon, 23 Fla., 437; 2 So. Rep. 825. Pre-existing lien defined.—Zinn v. Dzialynski, 14 Fla., 187. Lien of ancillary, not affected by irregularities anterior to issuing of attachment.—Budd v. Long, 13 Fla., 288. Lien prevails over mortgage subsequently given.—Loubat v. Kipp, 9 Fla., 60. Whether it continues after death of defendant as against creditors?—Ib.

ARTICLE 8.

RETURN OF PROPERTY TO DEFENDANTS.

Sections.....2116-2118

Ib., Sec. 13, Mch. 15, 1843.

2116. (1652.) Upon forthcoming bond.—The property so attached may at any time be restored to the said defendant or some other person for him, upon the defendant or such other person giving bond to the officer levying such attachment, payable to the plaintiff with two good and sufficient sureties to be approved by such officer, in double the value of the property levied upon, such value to be fixed by the officer, conditioned for the forthcoming of the property restored, and to abide the final order of the court.

Difference between effect of bond with statutory conditions and with condition to have "property forthcoming to abide," etc.—Collins v. Mitchell, 3 Fla., 4.

Feb. 14, 1835, Sec. 4.

2117. (1653.) Upon bond to pay the debt.—Or it may be restored to the defendant (or in case of foreclosure of mortgage, to any person who shall make affidavit that he is the owner of the equity of redemption), on his entering into bond with two good and sufficient sureties, to be approved by the officer, conditioned for the payment to the plaintiff in attachment of the debt or demand, and all costs of the suit, when the same shall be adjudicated to be payable to such plaintiff.

Ibid.

2118. (1654.) By replevin.—Or if the property be not subject to attachment, it may be re-taken by the defendant by a replevin proceeding provided for in Title VII, Chapter IV.

ARTICLE 9.

SALE OF PERSONAL PROPERTY PENDING SUIT.

2119. (1655.) Procurement of order.—All personal property levied on by attachment shall, unless it be restored to the defendant or some person for him, as provided in Sections 2116-2117-2118, be claimed by a third person, as provided by Section 2129, remain in custody of the officer who shall have attached the same until disposed of according to law. But when the property attached shall be of a perishable nature, or liable to great deterioration in value, or the costs of keeping the same shall be greatly disproportionate to the value thereof, the officer who issued the attachment may, in vacation as well as in term time, grant an order for the sale of such property after such notice as to the officer shall seem expedient, and the proceeds of such sale shall be paid into court, and abide the judgment thereof. Such sale may be made upon other days than the legal sale days in other cases. Feb. 17, 1833, Sec. 12.

To be liberally construed.—State ex rel. Merchants National Bank v. Hull, 37 Fla., 579. Property may be sold after writ of error and supersedeas. —Ib.; 20 So. Rep. 762.

ARTICLE 10.

DISSOLUTION OF ATTACHMENTS.

Sections.....2120-2121

2120. (1656.) Proceedings to dissolve.—The court to which such attachment is returnable shall always be open for the purpose of hearing and deciding motions to dissolve such attachment, and in any case upon oath in writing made by the defendant and tendered to the court that any allegation in the plaintiff's affidavit is untrue, a trial of such traverse shall be had, and if the allegation in the plaintiff's affidavit which is traversed is not sustained and proved to be true, the attachment shall be dissolved. If such affidavit shall traverse the debt or sum demanded, the judge may, upon application of either party, require formal pleadings as to the debt or sum demanded, to be filed in such time as he may fix, and the issue of fact, if any, raised by such pleadings shall be tried as hereinbefore provided, and at the Feb. 15, 1834, Sec. 5.

same time as the issue, if any, made by the affidavit as to the special cause assigned in plaintiff's affidavit. Issues of law raised by such pleadings shall be determined and given effect to by the judge as in other controversies at law.

Upon the demand of either party, a jury to be summoned from the body of the county upon the order of the judge shall be empanelled to try the issue joined as aforesaid; but a circuit judge shall not be required in vacation to go to any county in which he does not reside to try any such motion to dissolve.

All grounds of motion must be determined.—Forbes v. Porter, 25 Fla., 362; 6 So. Rep. 62. Trial by jury must be in county where suit is pending.—Canova v. Colby, 16 Fla., 167. Seems burden of proof on plaintiff.—Ib. What amount necessary to be proved.—Zinn v. Dzialynski, 13 Fla., 597. Estoppel of defendant by his admission of amount due.—Ib. Issue upon special cause when debt is actually due, is as to affiant's reason to believe.—Ib. Motion to dissolve may be made up to trial on merits.—Kennedy v. Mitchell, 4 Fla., 457; Pollock v. Murry, 38 Fla., 105; 20 So. Rep. 815.

2121. (1657.) Effect of dissolution.—

Ib., Sec. 7.

1. Upon the Action.—When any suit shall be commenced by attachment, and the same on motion be dissolved before appearance to the action, then in every such case the suit shall abate and be dismissed from the court; but if such motion is made after the party defendant has appeared to the action, the attachment only shall be dissolved, and the plaintiff may still proceed in said suit and prosecute his debt or demand to final judgment.

Second clause applied.—Kennedy v. Mitchell, 4 Fla. 457.

Ch. 1100, Sec. 3, Feb. 14, 1861.

2. Upon Writs of Garnishment.—Whenever an attachment shall be dissolved after appearance to the action, and there shall have been a writ of garnishment issued in the attachment suit, the same shall not be dismissed or abated in consequence of a dissolution of the said attachment, but shall remain good and binding and in full force and virtue and abide the final termination of the action commenced by said attachment.

Effect of dissolution on suit to which attachment is ancillary.—Loring v. Wittich, 16 Fla., 617.

ARTICLE 11.

NOTICE OF INSTITUTION OF SUIT, PERSONAL AND BY PUBLICATION.

Feb. 17, 1833, Sec. 14, as amended by Ch. 4731, Acts 1899.

2122. (1658.) Service.—In all cases commenced by attachment where property may be attached and not re-taken by the defendant, a notice of the institution of the suit by

attachment shall be personally served upon the defendant or shall be published once each week for two months in some newspaper in the county in which the suit is instituted; such notice shall require the defendant and all other persons interested to appear to the action. If the notice be a personal one, the time fixed for appearance shall be as in summons ad respondendum, and if it be published, the time fixed shall be the rule day succeeding the last publication; service of the personal notice shall be made at the time fixed for service of summons ad respondendum, and if made within the State, shall be made by the executive officer of the court; but if it be made out of the State, it may be made by any person, and proof thereof shall be furnished by the affidavit of such person before any judicial officer having a seal in the State where such service is made. If the writs be issued by a justice of the peace or county judge, the publication shall be only for one month, and when the amount of the debt claimed does not exceed twenty dollars the notice may be posted for one month in three public places in the county instead of being published in a newspaper.

Waiver of service of process in ancillary attachment.—Baars v. Gordon, 22 Fla., 25. Within what time notice may be given.—Simpson v. Knight, 12 Fla., 144.

ARTICLE 12.

APPEARANCE, PLEADING AND DEFAULT.

Sections 2123-2126

2123. (1659.) Declarations.—The declaration shall be filed on the rule day fixed in the notice, or upon the succeeding rule day, as provided in personal suits.

2124. (1660.) Appearance.—The appearance of the defendant shall be entered upon the day of the filing of the declaration. If the property be re-taken by the defendant under proceedings provided in Sections 2116-2117-2118, such re-taking shall be considered an appearance by the defendant as of the rule day next succeeding such re-taking, and the plaintiff shall be held to file his declaration upon the said rule day, or that next succeeding.

If there be personal service out of the State, the appearance of the defendant shall not be required until the rule day next succeeding the filing of the declaration.

2125. (1661.) Proceedings and pleadings after appearance.—Upon the appearance of the defendant, all further pleadings and proceedings shall be as in personal suits.

2126. (1662.) Defaults, and final judgments upon defaults.—If the defendant do not appear on or before the day hereinbefore fixed, a default may be taken, and final judgment entered against him.

ARTICLE 13.

AMENDMENTS.

2127. (1663.) Amendments of pleadings and proceedings in attachment.—Pleadings and proceedings in attachment shall be amendable as in other actions, and no motion to dissolve an attachment for any default or omission shall be granted if the application be made to amend in the particular objected to. But if any amendment be made to an attachment bond, such amended bond, although not heretofore binding upon the sureties, shall relate back to the institution of the suit and afford protection to the defendant in attachment from such institution.

ARTICLE 14.

JUDGMENTS.

2128. (1664.) Judgment against principal and sureties. If judgment by default be entered in favor of the plaintiff, and the defendant shall have re-taken the property upon a forthcoming bond, final judgment by default shall be entered at the same time against the defendant and the sureties on the bond for the amount of the judgment against the defendant if it be less than the value of the property as fixed by the officer, or for the value of the property so fixed if such value be less than the judgment against the defendant. If the defendant shall have re-taken the property upon a bond to pay the debt, such judgment shall also be entered against the sureties for the amount of the judgment against the de-

fendant. In case of a judgment against defendant after trial, judgment shall be entered against the sureties as above provided, except that the value of the property re-taken by defendant shall be found by the judge or the jury (as the case may be tried before the one or the other), and stated in the finding or verdict.

ARTICLE 15.

CLAIMS BY THIRD PERSONS TO PROPERTY ATTACHED.

2129. (1665.) As in cases of execution.—If any attachment shall be levied upon property claimed by any person other than the defendant in attachment, such person may, at his option, replevy the same or interpose a claim in the manner provided in case of execution. Feb. 15, 1834, Sec. 8; Mch. 15, 1843, Sec. 1.

Attachment law should be construed so as to advance the remedy.—Hardee v. Langford, 6 Fla., 13. Claimants must have a present right of possession superior to attaching creditors.—Stansel v. Rountree, 40 Fla., 428; 25 So. Rep. 277.

Attachment against firm.—Property of non-resident partners.—Action against firm.—Judgment.—Execution.—Injunction.—First National Bank of Orlando et al. v. Greig, 44 Fla., —; 31 So. Rep. 239.

Attachment.—Claim of third party.—Burden of proof.—Assignment for benefit of creditors.—Effect.—Validity.—Claflin Co. v. Harrison, 44 Fla., 218; 31 So. Rep. 818. Claim.—Judgment.—Indefinite character of.—Amount of judgment.—Proper verdict.—Review.—Geiger v. Henry, 44 Fla., 208; 32 So. Rep. 874.

ARTICLE 16.

Attachments, etc., in alimony cases.—See Section 1937.

CHAPTER II.

GARNISHMENT.

ARTICLE 1.—Right to writ. Section..... 2130
2.—Garnishment after judgment against defendant. Sections.....2131-2143
3.—Garnishment before judgment against defendant. Sections.....2144-2151

ARTICLE 1.

RIGHT TO WRIT.

Ch. 43, Sec. 1, Dec. 17, 1845. Ch. 3738, Sec. 1, May 12, 1887, as amended by Ch. 4136, Acts 1893.

2130. (1666.) Right defined.—Every person who shall have brought a suit in any court of this State against any person, natural or corporate, shall have a right to a writ of garnishment under the circumstances and in the manner hereinafter provided, to subject any indebtedness due to the defendant by a third person, and any goods, money, chattels or effects of the defendant in the hands, possession or control of a third person. The officer, agents and employees of any companies or corporations shall be, as regards such companies or corporations, third persons, and as such shall be subject to garnishment after judgment against such companies or corporations.

Both possession and privity of garnishee required. Exceptions.—Huot v. Ely, 17 Fla., 775. When garnishment lies to maker of negotiable note.—Ib. When, if at all, to reach legacy in hands of executor.—Post v. Love, 19 Fla., 634.

ARTICLE 2.

GARNISHMENT AFTER JUDGMENT AGAINST THE DEFENDANT.

Procurement of writ. Section..... 2131
The writ. Sections.....2132-2134
Appearance and answer of garnishee. Section..... 2135
Proceedings against garnishee. Sections.....2136-2139
Disposition of property surrendered by garnishee. Section..... 2140
Proceedings against persons named in answer of garnishee. Section 2141
Compensation of garnishee. Section..... 2142
Claims of third persons to property garnisheed. Section..... 2143

Ch. 43, Secs. 1, 14, Dec. 17, 1845, as amended by Sec. 1, Ch. 4393, Acts 1895.

2131. (1667.) Procurement of writ.—After judgment has been obtained against the defendant, before such writ shall issue, the plaintiff, his agent or attorney, shall make and file in the court where such judgment has been obtained an affidavit stating amount of said judgment, and that affiant does not believe that defendant has in his possession visible property upon which a levy can be made sufficient to satisfy the said judgment.

Such affidavit may be made and filed, and the writ issued thereon, either before or after the return of execution.

THE WRIT.

Form of. Section....2132
Service and return of. Section....2133
Effect of service of. Section....2134
Appearance and answer of garnishee. Section....2135

2132. (1668.) Form of writ.—The writ shall be directed to the sheriff or other proper officer of the county in which said garnishee may reside, and shall command the said garnishee to appear at the rule day to which said garnishment is returnable, and state on oath in writing, to be filed in the court, whether he is at the time of the answer indebted to the defendant, or was indebted at the time of the service of the writ, or at any time between such periods, and in what sum or sums, and what goods, money, chattels or effects of defendant he has at the time of his answer in his hands, possession or control, or had at the time of the service upon him of the said writ, or at any time between such periods, and whether he knows of any other person indebted to said defendant, or who may have any of the effects of said defendant in his hands. Such writ shall also state the amount named in plaintiff's affidavit. Ch. 43, Acts 1845, Sec. 1, as amended by Sec. 1, Ch. 4393, Acts 1895.

2133. (1669.) Service and return of the writ.—The writ shall be returnable and shall be served in the manner provided by law for the return and service of writs of summons ad respondendum. Ch. 43, Acts 1845, Secs. 2, 3.

Appearance by attorney waives defect of service.—Mercer v. Booby, 6 Fla., 723. A firm debtor is not garnishable by creditor of one partner.—23 Fla., 50; 1 So. Rep. 318. When money deposited with garnishee is subject to set off.—Howe v. Hyer, 36 Fla., 12; 17 So. Rep. 925. Such set off need not be formally pleaded.—Ib. Judgment in garnishment should not exceed the amount of judgment in principal suit.—Turner v. Adams, 39 Fla., 85; 21 So. Rep. 575.

2134. (1670.) Effect of service of writ.—The service of the writ shall make the garnishee answerable for all indebtedness due by him to the defendant, and for any goods, money, chattels or effects of the defendant in his hands, possession or control, at the time of the service of the writ or at any time between such service and the time of his answer. Ib., Sec. 1.

2135. (1671.) Appearance and answer of garnishee.—If any garnishee shall enter his appearance upon the return of the writ, he shall be entitled until the next ensuing rule day of the court to file his answer, and shall be required to file such answer on that day. Ib., Sec. 13.

Garnishee having notice of assignment of debt due by him must set up assignment in his answer.—Walters v. Whitlock, 9 Fla., 86.

PROCEEDINGS AGAINST GARNISHEE.

Default and final judgment. Section..... 2136
Traverse of answer of garnishee. Section..... 2137
Judgment upon confession of garnishee. Section..... 2138
Execution on failure of garnishee to surrender property. Section.... 2139
Disposition of property surrendered. Section..... 2140
Other proceedings. Sections.....2141-2143

2136. (1672.) Default and final judgment.—If it shall appear that garnishment has been lawfully served upon the garnishee and he shall, within the time prescribed herein, fail to appear, or having appeared, fail to answer and discover on oath, the clerk, or the judge if he has no clerk, shall enter a default against such garnishee, and thereupon a scire facias shall issue against such garnishee, returnable to the next rule day thereafter, to show cause, if any he has, why final judgment should not be entered against him; and upon such scire facias being returned executed, if such garnishee shall fail to appear and discover, as is directed, the clerk, or judge if the court has no clerk, shall enter final judgment against the garnishee.

Ib., Secs. 2, 3.

If such scire facias be to the master of a vessel, final judgment may be entered against him upon the return of the officer that he is not to be found.

Ch. 1100, Sec. 4, Feb. 14, 1861.

Such final judgment against the garnishee shall be for the amount of the judgment against the defendant, and execution shall issue therefor as upon other judgments.

Effect of judgments against garnishee on debt due by him.—Sessions v. Stevens, 1 Fla., 233.

2137. (1673.) Traverse of answer of garnishee.—Whenever any plaintiff shall allege that any garnishee has not discovered the true amount of debts due from him to the defendant, or that goods and chattels, money or effects belonging to the defendant are in his possession, or were at the time of the service of the writ, or between the time of such service and of the answer, the court shall direct without the formality of pleading, a jury to be empanelled, unless a good cause be shown by either party for a continuance, to inquire what is the true amount due from such garnishee to the defendant, and what goods, money, chattels or effects are in his possession belonging to said defendant, or was due or were in his possession at the time aforesaid. If the finding of the jury shall be against said garnishee, the court shall grant judgment in the same manner as if the facts found by the jury had been confessed by him on his examination, with the costs thereon. If the jury find in favor

Ch. 43, Sec. 4 Dec. 17, 1845.

of the garnishee, he shall recover costs against the plaintiff or plaintiffs.

2138. (1674.) Judgment upon confession of garnishee. Ib., Sec. 5.
When the garnishee shall confess his indebtedness to the defendant, or his possession of any goods, money, chattels or effects in his hands belonging to the defendant, and the plaintiff shall be satisfied with the said confession, then the clerk, or the court if it have no clerk, shall award judgment against said garnishee for the amount so confessed by him, and shall order execution to issue upon the said judgment; and if the amount of the judgment against the garnishee be not sufficient to satisfy the plaintiff's judgment against said defendant, then execution on the judgment against the defendant may also be levied on the goods, chattels or effects of the said defendant, so confessed by said garnishee to be in his hands or possession, which shall be sold in the same manner as under other executions.

2139. (1675.) Execution on failure of garnishee to surrender property.—If the garnishee will not surrender, pro- Ibid.
vided he have the power to do so, the goods and chattels belonging to said defendant, and which he has confessed to be in his hands or possession, then by order of the court execution may be issued and levied on the property of said garnishee for the whole amount of the plaintiff's judgment against the defendant, or for so much of said judgment as shall be then unpaid; and the officer shall proceed to sell the property as under other executions. But said garnishee shall have the right to release his property from such levy and sale by surrendering the said property of the defendant to the officer levying said execution on the day and hour appointed for the sale of the property so levied upon, or at any time previous to the day of the sale, and by paying the costs of the proceedings to sell up to the time of the surrender.

2140. (1676.) Disposition of property surrendered by garnishee.—When any garnishee shall have any of the Ib., Sec. 6.
goods ,chattels or effects of said defendant in his hands or possession, and shall surrender the same, the constable, sheriff or other officer shall receive said property, and shall proceed to sell the same under the execution against the defendant.

2141. (1677.) Proceedings against persons named in the answer of the garnishee.—If upon the answer of any gar- Ib., Sec. 3.
nishee it shall appear to the court that there are any of the

defendant's effects or property in the hands of any person who has not been garnisheed, such court shall, upon motion of the plaintiff, award a garnishment against such person having any of the effects or property of the defendant in his custody, hands, possession or control, who shall appear and answer, and be liable as other garnishees.

Ib., Sec. 7.

2142. (1678.) Compensation of garnishee.—The garnishee shall be allowed by the court the pay of a witness for his attendance out of the indebtedness to defendant, or out of the money or effects in his possession, and if there should be no such indebtedness, money or effects in his possession, then the allowance shall be against the plaintiff.

Ib., Sec. 8.

2143. (1679.) Claims by third persons to property garnisheed.—If any person other than the defendant shall claim that the indebtedness due by a garnishee is due to him and not to the defendant, or shall claim the effects in the hands or possession of any garnishee, and shall make affidavit that the said indebtedness or effects are bona fide his property, the court shall immediately, unless good cause be shown to the contrary, and without the formality of pleading, direct a jury to be empanelled to inquire of the right of such property between the claimant and the plaintiff; and if the finding of the jury shall be against such claimant, the plaintiff shall recover costs; and if the jury find in favor of such claimant, he shall recover costs against the plaintiff; and if such claim be interposed after a levy on property, the officer making said levy shall return said execution with his levy thereon and said affidavit of said claimant to the court from which said execution issued, and such proceedings shall be had thereon as in other cases of claims made to property taken on execution.

ARTICLE 3.

GARNISHMENT BEFORE JUDGMENT AGAINST DEFENDANT.

Procurement of writ. Section..... 2144
Amount to be retained. Section..... 2145
Judgment by default. Section..... 2146
Judgment by confession and upon traverse. Section..... 2147
Proceedings upon judgment for defendant. Sections.....2148-2149
Release of garnishee upon application of defendant. Section..... 2150
Proceedings when defendant is not found. Section..... 2151

2144. (1680.) Procurement of writ.—Before such writ shall issue, either in a suit commenced by a summons ad respondendum or by attachment before judgment has been obtained by the plaintiff against the defendant, the plaintiff, his agent or attorney, shall make and file in the court where the suit is pending, an affidavit that the affiant does not believe that the defendant will have in his possession after execution shall be issued visible property in this State and in the county in which suit is pending upon which a levy could be made sufficient to satisfy the judgment which affiant believes plaintiff will recover in the said suit, and shall state the amount the plaintiff expects to recover in said suit.

Ib., Sec. 11, as amended by Ch. 4393, Acts 1895.

2145. Amount to be retained.—No garnishee who may be indebted to, or have in his possession the money of a person whose money or credits may be garnisheed, shall retain out of said debt or money more than double the amount which the said writ of garnishment shall specify as the amount the plaintiff expects to recover in said suit, or the judgment he has recovered.

Sec. 2, Ch. 4393, Acts 1895.

2146. (1681.) Judgment by default.—Default and final judgment by default may be rendered against the garnishee, as in cases of garnishment after judgment; and such judgment shall be for the amount claimed by the sheriff; but no execution shall issue thereon or payment thereof be enforced until the plaintiff shall have recovered judgment against the defendant, and then only for the amount so recovered with costs.

Ch. 43, Acts 1845, Sec. 11.

2147. (1682.) Judgment by confession and upon traverse. Judgment against the garnishee upon his confession and upon traverse of his answer may be obtained as in cases of garnishment after judgment; but no execution shall issue thereon or payment thereof be enforced until the plaintiff shall have recovered judgment against the defendant, and then only for the amount so recovered.

Ibid.

2148. (1683.) Right of defendant upon judgment in his favor.—If the judgment shall be in favor of the defendant in the suit, then the plaintiff shall pay all costs which have accrued in consequence of suing out said writ of garnishment; and the money brought into the registry of the court thereby, or the judgment obtained thereon, except judgment by default against the garnishee, shall enure to the benefit of and be controlled and managed by the said defendant as amply and completely as though the same had been rendered in his favor.

Ch. 1100, Sec. 2, Feb. 14, 1861.

Ch. 43, Sec. 11, Dec. 17, 1845.

2149. (1684.) Right of garnishee upon judgment for defendant.—If any plaintiff shall discontinue his suit against the defendant, or be non-suited, or have a verdict against him on the trial of said suit, then the judgment against the garnishee shall become null and void, and such garnishee shall have execution for his costs, to be taxed as in other cases against such plaintiff in said suit.

2150. (1685.) Release of garnishee upon application of defendant.—If the defendant, after the filing of a declaration by the plaintiff, shall execute and file in the court a bond to be approved by the clerk, or by the court if it have no clerk, payable to the plaintiff in a sum double the amount claimed in the declaration, with two good and sufficient sureties, conditioned to pay to the plaintiff such sum, with interest and costs, as he may recover in the suit, the court shall enter an order discharging the garnishee. Or if the garnishee shall admit indebtedness to the defendant in excess of a sum sufficient to satisfy plaintiff's claim, the court shall, on motion of defendant and notice to plaintiff, release the garnishee from responsibility to the plaintiff for any indebtedness to the defendant in excess of a sum deemed by the court sufficient to satisfy the plaintiff's claim, with interest and costs.

2151. (1686.) Proceedings when defendant not to be found.—If the officer to whom any summons ad respondendum has been directed in a suit in which a writ of garnishment has been issued shall return that the defendant does not reside in the State, or if the officer to whom has been directed a writ of attachment in a suit commenced by attachment in which a writ of garnishment has also been issued shall not be able to find property of the defendant upon which to levy the writ of attachment, the plaintiff may give notice of the institution of such suit in the manner provided for giving notices of suits commenced by attachment. (See Section 2122.)

The pleadings and proceedings and entry of defaults and judgments shall be as in such cases of attachment.

If the plaintiff in such cases shall not give such notice within sixty days after the issuing of the writ of garnishment, the suit shall be dismissed upon motion of the defendant, or of the garnishee.

Attorney's fees and cost in garnishment.—See Section 1356.

Garnishment in alimony and divorce.—See Section 1937.

CHAPTER III.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

ARTICLE 1.—Declaration of rights and remedies. Sections.....2152-2156
2.—Questions involved in the action. Section..... 2157
3.—Petition and process. Sections.....2158-2159
4.—Jurors. Sections.....2160-2161
5.—Trial. Sections.....2162-2166
6.—Judgment and execution. Sections.....2167-2168
7.—Appeals. Section..... 2169
8.—Compensation of county judges. Section..... 2170

ARTICLE 1.

DECLARATION OF RIGHTS AND REMEDIES.

Sections 2152-2156

2152. (1687.) Unlawful entry and forcible entry defined. No person shall enter into any lands or tenements but in case where entry is given by law, nor shall any person, where entry is given by law, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner. Ch. 1630, Sec. 1, Aug. 14, 1868.

Second clause applied.—Greeley v. Spratt, 19 Fla., 644.

2153. (1688.) Unlawful entry and unlawful detention defined.—No person who shall, without consent, enter in a peaceable, easy and open manner into any lands or tenements, shall hold the same afterward against the consent of the party entitled to possession thereof. Ib., Sec. 2.

2154. (1689.) Remedy declared for unlawful entry and forcible entry.—If any person shall enter or shall have entered into lands or tenements in case where entry is not given by law, or if any person shall enter or shall have entered into any lands or tenements with strong hand or with multitude of people, even in case entry is given by law, the party turned out or deprived of possession by such unlawful, or by such forcible entry, by whatever right or title he held such possession, or whatever estate he held or claimed in the lands or tenements of which he was so dispossessed, shall at any time within three years thereafter be entitled to the summary remedy herein provided. Ib., Sec. 3.

2155. (1690.) Remedy declared for unlawful detention. If any person shall enter or shall have entered in a peaceable Ib., Sec. 4.

manner into any lands or tenements, in case such entry is lawful, and after the expiration of his right shall continue to hold the same against the consent of the party entitled to the possession, the party so entitled, whether as tenant of the freehold, tenant for years, or otherwise, shall be entitled to the like summary remedy at any time within three years after the possession shall so have been withheld from him against his consent.

What tenant cannot show as defense against lessor.—McLean v. Spratt, 20 Fla., 515. What demand of rent by landlord sufficient.—Ib. Notice to quit required (in the special case).—McLean v. Spratt, 19 Fla., 97.

Forcible entry and unlawful detainer cannot be joined. How defect reached.—Liddon v. Hodnett, 22 Fla., 271. Franchises not recoverable in this action—nor is a railroad.—Gibbs v. Drew, 16 Fla., 147. Forcible entry and detainer can not be maintained where entry made without or intimidation.—Livingston v. Webster, 26 Fla., 325; 8 So. Rep. 442.

ARTICLE 2.

QUESTIONS INVOLVED IN THIS ACTION.

Ib., Sec. 20.

2156. (1691.) Right of possession and damages.—No question of title, but only a right of possession and of damages, shall be involved in the action.

For what purpose title deed may be introduced.—Walls v. Endel, 17 Fla., 478.

ARTICLE 3.

PETITION AND PROCESS.

Sections 2157-2159

Ib., Secs. 5, 6.

2157. (1692.) Petition.—The party so turned out of possession, or so held out of possession, may exhibit his complaint, verified by oath of the plaintiff, his agent or attorney, before the county judge, or county court, or circuit court of the county in which the real estate is situated, in the following form or to the following effect:

State of Florida, }
..... County. }

A. B., of the said county, complains that C. D. has unlawfully (or forcibly as the case may be) turned him out of

and withholds possession (or unlawfully and against his consent withholds from him possession) of certain real estate known and described as follows: (here insert description) containing by estimation ..... acres of land, with appurtenances, lying and being in the State aforesaid; whereof he prays restitution of possession and his damages.

A. B., Plaintiff.

2158. (1693.) Process. Issuance and form of.—The clerk of the court, or the county judge, as the case may be, upon the filing of said complaint shall thereupon issue a summons to the following effect: Ib., Sec. 7.

The State of Florida, to the sheriff of.....county, greeting:

We command you to summon ..... if he be found within the county of..... personally to be and appear before (the name of the court or county judge, as the case may be), for said county, on the ..... Monday in ....., being the first day of our next term, to answer ..... in an action wherein he prays restitution of possession of the following real estate, with the appurtenances, viz: ...., and have then and there this writ.

Witness (name of the clerk or county judge, as the case may be), this the ..... day of ....., A. D. 19....

2159. (1694.) Return and service thereof.—

1. Return.—The summons aforesaid shall be made returnable to the next term of the court in which it is brought. Ib., Secs. 9, 24.

But if a regular term of the court in which the suit is brought will not be held within fifteen days after the filing of the complaint, the party making the complaint may have the summons to be issued made returnable to said court at any time not less than ten days from its date.

2. Service of Process.—Such process shall be served at least ten days before the day to which it is returnable, and it shall be served as the law requires summons ad respondendum to be served, except that in case no person can be found at the usual place of residence of defendant, it may be served by posting a copy in a conspicuous place on the property in the summons mentioned. Ib., Sec. 9.

ARTICLE 4.

JURORS.

Ib., Sec. 8.

2160. (1695.) Regular venires.—If the summons be returnable to a term of the circuit or county court, the action shall be tried by a jury of six good and lawful men, of that county, free-holders, and not of kin to either party, to be selected from the jury in attendance at said term of court, or, in case of deficiency, from the bystanders.

Ib., Secs. 8, 24.

2161. (1696.) Special venire.—If the summons be returnable to the court of the county judge, or to a day in vacation in the circuit or county court, the clerk, or the judge, as the case may be, shall, at the time of issuing the summons, issue a venire facias directed to the sheriff of the county commanding him to summon at least six persons possessing the qualifications mentioned in the preceding section, to be attendant as jurors upon the court on the day to which the writ is returnable, to try the complaint aforesaid. If a sufficient number of the persons thus summoned do not attend, the deficiency shall be made up of bystanders qualified as aforesaid.

ARTICLE 5.

TRIAL.

Sections 2162-2166

Ib., Sec. 10.

2162. (1697.) To be without pleadings.—If it shall appear to the court, at the return day of the summons, that the defendant has been duly served therewith, it shall proceed without further pleadings in writing to empanel a jury to try the cause.

Ib., Sec. 11.

2163. (1698.) Oath of jury in forcible or unlawful entry and unlawful detainer.—In cases of forcible entry and unlawful detainer the jury shall be sworn to well and truly try whether the defendant at any time within three years before the filing of the complaint, did forcibly or unlawfully enter upon the property in the complaint mentioned and turn the plaintiff out of the possession thereof; and whether the defendant continued to hold possession thereof at the

time of filing the complaint, and to assess such damages as may be recoverable according to the evidence.

Issue defined.—Greeley v. Spratt, 19 Fla., 644.

2164. (1699.) Oath in unlawful detainer.—If the complaint be of an unlawful detainer against the consent of the plaintiff, the jury shall be sworn to well and truly try whether the defendant, against the consent of the plaintiff, wrongfully holds possession of the real estate mentioned in the complaint; whether the said defendant has so held possession thereof against the consent of the plaintiff within three years next before the exhibition of the complaint; and whether the plaintiff has the right of possession in the tenement aforesaid, and to assess such damages as may be recoverable according to the evidence. Ibid.

2165. (1700.) Evidence as to damages.—On the trial, evidence shall be admitted as to the monthly rental value of the premises, and, in case of recovery by plaintiff, the jury shall fix his damages at double the rental value of the premises from the time of the unlawful or wrongful holding. But the damages in no case of detainer shall be fixed at more than rental value of the premises, unless the jury be satisfied from the evidence that such detention is willful and knowingly wrongful. Ib., Sec. 14.

First clause applied.—Greeley v. Spratt, 19 Fla., 644. Last clause applied.—McLeon v. Spratt, 20 Fla., 515.

2166. (1701.) Form of verdict.—

1. In Cases of Forcible or Unlawful Entry.—The form of the verdict of the jury shall be, in cases of forcible or unlawful entry, substantially as follows: We, the jury, find that the defendant did (or did not), within three years next before the filing of the complaint in this cause, forcibly (or unlawfully) enter upon the real estate in the complaint mentioned, and turn the plaintiff out of possession thereof; that the said defendant did (or did not) continue to hold the possession thereof, at the date of the said complaint; and we assess the damages of plaintiff at ..... dollars. Ib., Sec. 13.

2. In Cases of Unlawful Detainer.—The form of the verdict in cases of unlawful detainer against the plaintiff's consent shall be substantially as follows: We, the jury, find that the defendant did (or did not), at the time of filing the complaint in this cause, wrongfully hold possession of the real estate mentioned in the complaint, against the consent of the plaintiff; that the said defendant has (or has not) so held pos- Ibid.

session thereof, against the consent of the plaintiff, within three years next before the filing of said complaint; and that the plaintiff has (or has not) the right of possession in the real estate aforesaid; and we assess the damages of the plaintiff at ..... dollars.

ARTICLE 6.

JUDGMENT AND EXECUTION.

Ib., Sec. 15.

2167. (1702.) Form of.—If the verdict of the jury shall be in favor of the plaintiff, the court shall award a judgment for the plaintiff that he recover possession of the property described in the complaint, with his damages and costs, and shall award a writ of habere facias possessionem to be executed without delay, and also a writ of execution for his damages and costs as in other civil cases; and if the verdict shall be for the defendant, the court shall render judgment against the plaintiff that his complaint be dismissed and that the defendant recover costs, and execution may issue therefor.

Ib., Sec. 20.

2168. (1703.) Effect of judgment. — No judgment rendered either for plaintiff or defendant shall bar any action of trespass for injury to the property, or ejectment, between the same parties respecting the same property in question; nor shall any verdict be held conclusive of the facts therein found, in any action of trespass or ejectment.

Applied.—Walls v. Endel, 20 Fla., 86.

ARTICLE 7.

NEW TRIALS.

Courts may grant.—New trials may be granted in proper cases by the court trying the cause.

ARTICLE 8.

APPEALS.

Ib., Sec. 16.

2169. (1705.) Manner of taking and effect. — A writ of error may be taken by the losing party to the proper appellate court, in the same manner and time, and under the same

terms, including the right to a bill of exceptions, as in other writs of error.

But the plaintiff in error shall only be required to give bond for the payment of all costs occasioned by this writ, and for the payment of damages (if he be defendant) awarded against him if his writ be not sustained; and no writ of error shall operate as a supersedeas to the execution of the writ of possession. Ch. 1691, Sec. 1, Feb. 1, 1869.

ARTICLE 9.

COMPENSATION OF COUNTY JUDGE.

2170. (1706.) Amount and manner of payment.—The county judge shall receive fees for his services in said proceedings, the same in amount as that fixed for the clerk of the circuit court for similar services, and shall in addition receive five dollars for each day occupied in the trial. Such fees and per diem shall be taxed in the costs.

CHAPTER IV.

REPLEVIN.

ARTICLE 1.—Right to writ. Sections.....2171-2172
2.—In what court action to be had. Sections.....2173-2174
3.—Commencement of action. Sections.....2175-2179
4.—Execution of writ. Sections.....2180-2183
5.—Pleadings. Sections.....2184-2186
6.—Amendment of pleadings and proceedings. Section.... 2187
7.—Judgment and execution. Sections.....2188-2189

ARTICLE 1.

RIGHT TO THE WRIT.

2171. (1707.) Generally.—Any person, when goods or chattels may be wrongfully detained by any other person or officer, may have under the circumstances and in the manner hereinafter provided, a writ of replevin for the recovery Mch. 11, 1845, Sec. 1.

thereof, and for the recovery of the damages sustained by reason of the wrongful caption or detention.

Lies in case of conditional sale.—Campbell Mfg. Co. v. Walker, 22 Fla., 412. Not in case of goods in custody of the law.—Tyson v. Bowden, 8 Fla., 61.

2172. (1708.) Limitations upon the right.—

1. Property Taken for Taxes, etc.—No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, assessment or fine in pursuance of any statute in this State.

Ib., Sec. 2.

2. Property Taken Under Execution, etc.—Nor shall replevin lie at the suit of the defendant in any execution or attachment to recover goods and chattels seized by virtue thereof, unless such goods and chattels are exempted by law from such execution or attachment.

Ib., Sec. 3.

3. For Property Replevined from Defendant.—Nor shall replevin lie by the original defendant in replevin for property taken in replevin and delivered to the plaintiff while the same remains in the possession of the original plaintiff or his agents.

4. For Property to Which Plaintiff Has Right of Possession.—Nor shall replevin lie at the suit of any person unless he shall have a right to reduce into his possession the goods taken.

Mch. 10, 1845, Sec. 3.

ARTICLE 2.

IN WHAT COURT ACTION TO BE HAD.

Sections 2173-2174

2173. (1709.) Generally.—The action shall be brought in the court in the county or justice's district where the property is, which shall have jurisdiction of the value of the articles sought to be replevied, as set forth in the affidavit hereinafter provided for.

Ib., Sec. 14.

When property consists of separate articles, any one of which may in value be within the jurisdiction of a justice of the peace, but taken together will exceed that jurisdiction, the plaintiff shall not, for the purpose of giving jurisdiction to a justice of the peace, divide and separate said property to enable him to bring separate actions therefor.

2174. (1710.) In cases of urgency.—When property wrongfully taken or wrongfully detained exceeds in value

Ib., Sec. 15.

the jurisdiction of a justice of the peace, and it is inconvenient or impracticable from distance or other causes, or the urgency of the case will not permit, to apply to the clerk of the circuit or county court, as the case may be, for a writ of replevin, a justice of the peace shall, after affidavit and bond as hereinafter provided shall have been made and given and filed with the justice (who shall also approve the bond), issue a writ of replevin, directed to a sheriff or a constable, and returnable to the court having jurisdiction.

Upon the issuance of the writ, the justice shall immediately file the affidavit and bond in the court to which the writ is returnable, and the cause shall thereafter proceed in that court.

ARTICLE 3.

COMMENCEMENT OF ACTION.

Sections 2175-2179

2175. (1711.) Procurement of writ and summons.—Actions of replevin shall be commenced by writ and summons, and before they shall issue, the plaintiff, or some competent person in his behalf, shall make and file in the court an affidavit and a bond as hereinafter provided. Ib., Secs. 4, 6.

2176. (1712.) Contents of affidavit.—The affidavit shall state that the plaintiff is lawfully entitled to the possession of the property (describing it, and stating its true value) and that the same has not been taken for any tax, assessment or fine levied by virtue of any law of this State, nor seized under any execution or attachment against the goods and chattels of such plaintiff liable to execution, and that the defendant has possession of and detains the same from plaintiff, in the county or justice district in which the suit is brought. Ib., Sec. 6.

Must describe property.—Branch v. Branch, 6 Fla., 314.

2177. (1713.) Requisites of bond. — The bond shall be payable to the defendant, with at least two good and sufficient sureties, to be approved of by the officer issuing the writ, in at least double the sworn value of the property to be replevied, conditioned that the plaintiff will prosecute his suit to effect and without delay, and that if the defendant recover judgment against him in the action, he will return Ibid.

the same property, if return thereof be adjudged, and will pay to the defendant all such sums of money as may be recovered against him by such defendant in the said action for any causes whatever.

In suit by executor in individual capacity, bond binding estate not necessary.—Branch v. Branch, 6 Fla., 314. Is it when he sues as executor?—Ib. Bond need not contain description of the property.—Ib. Not invalidated by excessive statement of damage in declaration.—Ib. Informal sustained as voluntary bond, when.—Ib. What sufficient identification of clerk approving.—Ib. Person signing need bind nobody but himself.—Ib.

Ib., Sec. 4.

2178. (1714.) Form and return of writ and summons. The writ and summons shall be returnable as other process in actions at law; such writ and summons shall command the officer to whom it may be directed to replevy the goods and chattels in possession of the defendant, describing them, and to summon the defendant to be and appear before the court from which said writ and summons were issued, on the return day thereof, to answer the plaintiff in the premises.

Ib., Sec. 5.

2179. (1715.) Service thereof.—Such writ and summons shall be served upon the defendant at the time and in the manner in which writs of summons ad respondendum are required to be served.

ARTICLE 4.

EXECUTION OF THE WRIT.

Sections.....2180-2183

Ib., Sec. 7.

2180. (1716.) Upon property in building, etc.—In executing the writ of replevin, if the property or any part thereof be secreted or concealed in any dwelling house, or other building or enclosure, the officer shall publicly demand delivery thereof, and if the same be not delivered by the defendant or some other person, he shall cause such house, building or enclosure to be broken open, and shall make replevin according to the writ; and if necessary, he shall take to his assistance the power of the county.

2181. (1717.) Upon property changing possession pending execution of the writ.—If the property to be replevied be in the possession of the defendant at the time of the issuance of the writ, and shall pass into the possession of a

third person before the execution of the writ, the officer holding the writ shall execute it upon the property in the possession of such third person, and shall serve the writ and summons both upon the defendant and such third person, and the suit, with proper amendments, shall proceed against such third person.

2182. (1718.) Upon property removed from jurisdiction pending suit.—If the property to be replevied shall at the time of the issuance of the writ be in the territorial jurisdiction of the court issuing the writ, the officer to whom the writ is directed shall deliver the same to the proper officer in the jurisdiction into which the property has been removed, and such latter officer shall proceed to execute the writ, and shall hold the property subject to the orders of the court issuing the writ.

2183. (1719.) Delivery of property to plaintiff or defendant.—The officer executing said writ shall deliver said property to the plaintiff in replevin after the lapse of three days from the time said property was so taken, unless within said three days the defendant in replevin shall give bond in double the value of said property as appraised by the said officer, with security to be approved by such officer, conditioned to have said property forthcoming to abide the result of the suit instituted against the same, in which event said property shall be re-delivered to the said defendant in replevin. Ch. 1099, Sec. 1, Feb. 2, 1861.

After delivery to plaintiff and while suit is pending, property is in custody of the law. Defendant cannot then sue plaintiff for value.—Miller v. White, 14 Fla., 435. That title to the property is in a third party, no defence.—Anderson v. Agnew, 38 Fla., 30; 20 So. Rep. 766; Webster v. Brunswick Balke Calender Co., 37 Fla., 433; 20 So. Rep. 536.

ARTICLE 5.

PLEADINGS.

Pleadings of plaintiffs. Section..... 2134
Pleadings of defendant. Section..... 2135
Pleadings by both parties. Section..... 2136

2184. (1720.) Pleadings of plaintiffs.—

1. Time of Filing Declaration.—In replevin, the plaintiff shall file his declaration at the time required by law in other suits, unless further time be given by the court. Mch. 11, 1845, Sec. 9.

Ib., Sec. 8.

2. Declaration When Property Not Delivered to Plaintiff.—If the property specified in the writ of replevin be not delivered to the plaintiff, etc., and the defendant shall have been duly summoned, the plaintiff may either sue out an alias writ, or proceed in his suit by filing a declaration in trover or trespass, and thereby abandon his action in replevin.

Plaintiff may (in proper case) cause issue of pluries writ. Effect of his so doing on his right to declare in trespass or trover.—Branch v. Branch, 6 Fla., 314.

2185. (1721.) Pleadings of defendant.—

Ib., Sec. 9.

1. Time for Filing Pleas and Demurrers.—The defendant may plead or demur to the declaration within such time as is prescribed in other actions at law.

Ib., Sec. 10.

2. Plea of Not Guilty.—The defendant may plead that he is not guilty of the premises charged against him, and this plea shall put in issue not only the right of the plaintiff to the possession of the property described in the declaration but the wrongful taking and detention thereof.

Applied.—Holliday v. McKinne, 22 Fla., 153.

2186. (1722.) Pleadings and proceedings by both parties. Pleadings and proceedings in replevin shall be as in other actions, when not inconsistent with the provisions of this chapter.

The ad damnum in the declaration refers to damages for the detention and not to the value of the property.—Anderson v. Carter, 24 Fla., 199; 3 So. Rep. 577. A defendant in execution or attachment can bring replevin to recover exempt property notwithstanding he has an equitable remedy.—Allen v. Ingram, 39 Fla., 239; 22 So. Rep. 651. When payee of note may bring for property sold with a reservation of title.—Roof v. Chattanooga, etc., Co., 36 Fla., 284; 8 So. Rep. 597. One cannot maintain for use of another.—Ib. Demand not necessary when defendant asserts title.—Webster v. Brunswick, etc., Co., 37 Fla., 433; 20 So. Rep. 536. Defense of ownership properly predicated upon a plea of not guilty.

ARTICLE 6.

AMENDMENTS.

2187. (1723.) Amendment of pleadings and proceedings. Pleadings and proceedings in replevin shall be amendable as in other actions, and no motion to dismiss a replevin suit or quash the execution of the writ shall be granted if application be made to amend in the particular objected to. But

if any amendment be made to any replevin bond, such amended bond, although not heretofore binding upon the sureties, shall relate back to the institution of the suit and afford protection to the defendant in replevin from such institution.

Material variance between writ and affidavit and bond amendable.—Roberts et al. v. Gee, 39 Fla., 531; 22 So. Rep. 877. Affidavit amendable.—State ex rel. v. Smith, 32 Fla., 476; 14 So. Rep. 43.

ARTICLE 7.

JUDGMENT AND EXECUTION.

Sections 2185-2189

2188. (1724.) Judgment for the plaintiff.—

1. When Goods Not Delivered to the Defendant.—If it shall appear, upon default of the defendant, or upon trial or otherwise, that the goods described in the declaration were wrongfully taken or detained by the defendant, and the said goods shall have been delivered to plaintiff by the officer executing the writ, the plaintiff shall have judgment for his damages caused by the taking and detention, and for his costs of suit.

2. When Goods Are Re-Delivered to Defendant.—If it shall appear, as set forth in the preceding section, that the goods have been re-delivered to the defendant upon his forthcoming bond, the plaintiff shall take judgment for the property itself and against the defendant and the sureties on the forthcoming bond of the defendant for the value of the property; such judgment to be satisfied by the recovery of the property, or of the amount adjudged against the defendant and his sureties. After the rendition of the judgment, the plaintiff may, at his option, sue out a writ of possession for the property, and execution for his costs, or sue out execution against the defendant and his sureties for the amount recovered as aforesaid and costs. If he shall elect to sue out a writ of possession for the property, and the officer shall return that he is unable to find the said property, or any of it, the plaintiff may immediately sue out execution against the said defendant and his sureties as aforesaid for the whole amount recovered against them, or for the amount recovered less the value of the goods found by the officer. If he shall sue out an execution for the whole amount, the officer shall

Ch. 3133, Sec. 1, Feb. 4, 1879.

Amended by Sec. 1, Ch. 5159, Acts 1903.

release all goods taken under the writ of possession. In any proceeding to ascertain the value of the goods, so that judgment for such value may be entered, the value of each article shall be found, except it shall not be necessary to ascertain the value of each article of a lot of goods, wares and merchandise where the same have been replevined, but it shall be sufficient to ascertain the total value of the entire lot found for the plaintiff or defendant, as the case may be.

Plaintiff is bound by his election, and cannot two years after amend the judgment.—McGriff v. Reid, 37 Fla., 51; 19 So. Rep. 339.

Costs.—Plaintiff entitled to his costs where he succeeds upon the issue tendered him.—Webster v. Brunswick Co., 37 Fla., 433; 20 So. Rep. 536.

2189. (1725.) Judgment for defendant.—

1. When Goods Have Been Re-Delivered to Defendant.—When goods shall have been re-delivered to the defendant upon his forthcoming bond, and it shall appear upon the non-suit of the plaintiff, or upon trial or otherwise, that the defendant is entitled to the goods, he shall have judgment against the plaintiff and the sureties upon his bond for his damages for the taking of such property and for his costs.

Mch. 15, 1845, Sec. 12.

"Otherwise" construed to cover judgment of dismissal.—Branch v. Branch, 5 Fla., 447.

2. When Goods Have Not Been Re-Delivered to Defendant.—When it shall appear as set forth in the preceding section and the property shall not have been re-delivered to the defendant, judgment shall be entered up against the plaintiff for possession of the property, and costs, and against him and his sureties for the value thereof and costs, in the same manner as provided in Section 2188, Paragraph 2, for judgment in favor of the plaintiff; and the defendant shall have the same election as in said section accorded to the plaintiff. The value of each article of the goods replevined shall be found as is directed in said section, with same exception.

Ib., Sec. 13.

Judgment must conform to verdict.—Holliday v. McKinne, 22 Fla., 153.

CHAPTER V.

STATUTORY LIENS.

ARTICLE 1.—Declaration of liens. Sections.....2190-2208
2.—Priority of liens. Section..... 2209
3.—Acquisition of liens. Sections.....2210-2211
4.—Enforcement of liens. Sections.....2212-1224
5.—Release of liens. Section..... 2225

ARTICLE 1.

DECLARATION OF LIENS.

Upon real estate. Sections.....2190-2195
Upon personal property. Sections.....2196-2208

UPON REAL ESTATE.

Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, upon the following described real estate, under the circumstances hereinafter mentioned, to wit: Rev. Stat. 1892 modified by Sec. 1, Ch. 5143, Acts 1903.

2190. (1726.) For labor on buildings and structures.—In favor of any mechanic, laborer or other person who shall perform by himself or others any labor upon, or in the construction or repair of any building or other work or structure, or of additions to or upon any fixtures therein or thereon; upon such buildings, work or structure and the land upon which it stands. Sec. 2, Ch. 5143, Acts 1903.

2191. (1727.) For labor on railroads, telegraphs. etc.—In favor of any person performing by himself or others any labor upon any railroad, canal, telegraph or telephone line, wharf, mill, distillery or other manufactory, whether in the construction, operation or repair thereof; upon such line, wharf, mill, distillery or other manufactory, any and all franchises, machinery and equipments connected therewith or thereon and on the land upon which they stand. Sec. 3, Ch. 5143, Acts 1903.

2192. (1728.) For labor on farms, etc.—In favor of any person performing by himself or others any labor upon or in any farm. orchard, grove, garden, park or other grounds, whether in clearing up, fencing, ditching or draining, or in maintaining, improving or cultivating the same; upon such farm, orchard, grove, garden, park or other grounds. Sec. 4, Ch. 5143, Acts 1903.

2193. (1729.) For materials furnished.—In favor of any person who shall furnish any building material for the construction, repair or use of any building, railroad, canal, or telegraph line, wharf, bridge, mill, distillery or other manufacturing work or structure; upon the said buildings, lines, or other property and the lands upon which they stand. Sec. 5, Ch. 5143, Ib.

2194. Mechanics and laborers on sidewalks.—That any mechanic, laborer or other person who shall perform by Sec. 6, Ch. 5143, Acts 1903.

himself or others any labor, or shall furnish any materials, upon or in the construction or repair of any sidewalk laid or constructed on any street and adjacent to any lot, piece or parcel of land owned by any private person or corporation, in any city or incorporated town, by the procurement of the owner of such land or his agent or a person contracting with the owner to have the work done, or materials furnished, shall have a lien upon the interest of the owner in such land and may enforce the same in the same manner as is provided in this act.

Sec. 7, Ib.

2195. Extent of lien.—If the labor or materials mentioned herein shall be done or furnished by the procurement of the owner of the property, or his agent, or of a person contracting with him to have the work done or material furnished, the lien shall be upon interest of such owner; but if the labor be done or the materials furnished by the procurement of a person having less than the absolute interest, or of his agent, or of any person contracting with him to have the work done or materials furnished, the lien shall be only upon the limited interest of such person.

UPON PERSONAL PROPERTY.

Rev. Stat. 1892, as modified by Sec. 1, Ch. 5143, Acts 1903.

Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, upon the following described personal property, under the circumstances hereinafter mentioned, to wit:

Sec. 1730, Rev. Stat. 1892, as amended by Ch. 4583, Acts 1897.

2196. (1730.) For labor on and with machines, etc.—In favor of any person by himself or others performing any labor upon or with any engine, machine, apparatus, fixture, implement, newspaper or printing material or other property, or doing work in any hotel; upon such engine, machine, material, apparatus, fixture, implement, newspaper or printing material, or other property, and upon the furniture, furnishings and belongings of said hotel.

Ch. 3747, Acts 1887, Sec. 7.

2197. (1731.)For labor on logs and timber.—In favor of any person by himself or others cutting, rafting, running, driving, or performing other labor upon logs or timber of any kind; on such logs and timber, and on any article manufactured therefrom.

Ib., Sec. 10.

2198. (1732.) For labor as bookkeeper, clerk, etc.—In favor of bookkeepers, clerks, agents, porters and other employees of merchants and transportation companies and other corporations; upon the stock, fixtures and other property of such merchants, companies or corporations.

2199. (1733.) For labor in raising crops.—In favor of any person performing any labor in, or managing or overseeing, the cultivation or harvesting of crops; upon the crops cultivated or harvested. Ib., Sec. 9.

2200. (1734.) For labor on or for vessels.—In favor of any person performing for himself or others any labor or service of any kind on, to or for the use or benefit of a vessel or water craft, including masters, mates and members of the crew, and persons loading or unloading the vessel, or putting in or taking out ballast; upon such vessel or watercraft, her tackle, apparel and furniture. Ch. 3612, Sec. 1, Feb. 16, 1885.

2201. (1735.) For manufacturing and repairing articles. In favor of any person who shall manufacture, alter or repair any article or thing of value; upon such article or thing. Ch. 3747, Sec. 5, June 3, 1887.

2202. (1736.) For furnishing articles to be manufactured.—In favor of any person who shall furnish any logs, lumber, clay, sand, stone or other material whatsoever, crude or partially or wholly prepared for use, to any mill or other manufactory to be manufactured into any article of value; upon all such articles furnished and upon all articles manufactured therefrom. Ib., Sec. 7.

2203. (1737.) For furnishing locomotives, machinery, etc.—In favor of any person who shall furnish any locomotive or stationary engine, water engine, wind mill, car or other machine or parts of machine or instrument for any railroad, telegraph or telephone line, mill, distillery, or other manufactory; upon the articles so furnished. Ib., Sec. 9.

2204. (1738.) For furnishing material for vessels.—In favor of any ship chandler, storekeeper or dealer furnishing stores, provisions, rigging or other material to or for the use of any ship, vessel, steamboat or other water craft; on such ship, vessel, steamboat or other water craft. Ch. 40, Sec. 14, Dec. 29, 1845.

2205. (1739.) For care and maintenance of horses.—In favor of all keepers of livery, sale or feed stables, for feeding or taking care of any horse or other animal put in their charge; upon such horse or other animal. Ch. 3618, Sec. 1, Feb. 4, 1885.

2206. (1740.) For boarding and lodging at hotels.—In favor of keepers of hotels and boarding houses for the board and lodging of, and for moneys advanced to guests; upon the goods and chattels belonging to such guests in such ho- Ch. 1999, Sec. 6, Feb. 19, 1874.

tel or boarding house. Upon the non-payment of such sums in accordance with the rules of such hotel or boarding house, the keeper thereof may instantly eject such guests therefrom.

2207. Service of stallions, etc.—Owners of stallions, jacks, or bulls shall have a lien of superior dignity upon the colt or calf of the get of said stallion, jackass or bull: Provided, however, That such service shall have been done upon the application of the owner of the mother of such colt or calf.

Sec. 1, Ch. 4352, Acts 1895.

2208. For loans and advances.—Any person or persons who shall procure a loan or advance of money or goods and chattels, wares or merchandise or other things of value, to aid him, her or them in the business of planting, farming, timber getting or any other kind of businesses in this State from any factor, merchant, firm or person in this State, or in the United States or in any foreign country, shall, by this act, be held to have given to the lender, lenders, or person making such advance, a statutory lien of prior dignity to all other incumbrances, saving and excepting liens for labor and liens in favor of landlords, upon all the timber getting, all the crops, and products grown or anything else made or grown by said person or persons, through the assistance of said loan or advances: Provided, That the lien above given shall not be created unless the person or persons obtaining or procuring such loan or advance shall give to the person or persons making such loan or advance an instrument of writing consenting to said lien; and the same shall be recorded in the office of the clerk of the circuit court of the county wherein such business of planting, farming or timber getting is conducted.

Sec. 1, Ch. 4163 Acts 1893.

ARTICLE 2.

PRIORITY OF LIENS.

2209. Upon both real and personal property.—Liens for labor and liens for material provided for by this act shall take priority among themselves according to the times that the notices required to create such liens respectively were given or were recorded in the cases where record is required; that is to say, each such lien which shall have attached to the property shall be paid before any such lien

Sec. 12, Ch. 5143, Acts 1903.

which shall have subsequently attached thereto, shall be entitled to be paid.

ARTICLE 3.

ACQUISITION OF LIENS.

Sections 2210-2211

2210. (1742.) By persons in privity with the owner.—

1. As Against the Owner.—As against the owner, absolute or limited, of the property, real or personal, upon which a lien is claimed, or person deriving through his death, or purchasers or creditors with notice, the lien hereinbefore provided for shall be acquired by any person, in privity with such owner, by the performance of the labor or the furnishing of the materials. Any purchaser or creditor whose title, interest, lien or claim in or to the property shall be created, or shall arise, while the construction or repair of such property as aforesaid is in progress shall be deemed and held to be a purchaser or creditor with notice.

Sec. 1742, Rev. Stat. 1892, as amended by Secs. 8, 9, 11, Ch. 5143, Acts 1903.

2. As Against Purchasers and Creditors.—

(a) As to Real Estate.—As against purchasers and creditors of such owner without notice, such lien shall be acquired upon real estate only from the time of the record in the office of the clerk of the circuit court of the county where the real estate lies of a notice of such lien. Such notice shall contain a statement of the amount claimed, a description of the property upon which the lien is claimed, and a notice of the intention to hold a lien for the said amount, and shall be verified by the oath of the lienor or his agent. It shall be filed only after the labor has been entirely performed and the materials entirely furnished.

Sec. 1, Ch. 4582, Acts 1897, amended by Sec. 9, Ch. 5143, Acts 1903.

No such notice of a perfected lien shall be effectual against creditors or purchasers of the owner without notice unless it be filed within three months after the entire performance of the labor or the entire furnishing of the material.

(b) As to Personal Property.—There shall be no lien upon personal property as against purchasers and creditors without notice, unless the person claiming the lien be in possession of the property upon which the lien is claimed, in which case the lien as against creditors and purchasers without notice shall continue so long as the possession continues, but not for a period longer than three months after the performance of the labor or the furnishing of the material.

Sec. 1, Ch. 4582, Acts 1897.

2211. (1743.) By persons not in privity with the owner.

Sec. 1743, Rev. Stat. 1892, Sec. 2, Ch. 4582, Acts 1897, and Sec. 15, Ch. 5143, Acts 1903.

1. As Against the Owner.—A person entitled to acquire a lien, not in privity with the owner, as aforesaid, shall acquire a lien upon such owners' real or personal property as against him, and persons claiming through his death, and purchasers and creditors with notice, by the delivery to him, or his agent, of a written notice that the contractor or other person for whom the labor has been performed, or the materials furnished, is indebted to the person performing the labor or furnishing the materials in the sum stated in the notice; but if a person who is performing or is about to perform, by himself or others, labor, or is furnishing or is about to furnish materials shall so desire, he may deliver to the owner, or his agent, a written cautionary notice that he will do certain work, or will furnish certain materials, or both. A lien shall exist from the time of the service of the notice for the amount unpaid on the contract of and by the owner to the contractor or the person for whom the work was done or the material furnished.

Such service shall also create a personal liability against the owner of the property in favor of the lienor giving such notice for the amount due him as aforesaid, but not to a greater extent than the amount of such original contract.

(A) As Against Purchasers and Creditors.—

Sec. 1, Ch. 5143, Acts 1903.

(a) Upon Real Estate.—As against purchasers and creditors of such owners without notice, such liens against real estate shall be acquired from the time of the recording (subsequent to the service of the notice provided for in Paragraph 1 of this section) in the office of the clerk of the court, in the county, of a notice of lien similar to that provided by Section 2210. Any purchaser or creditor whose title, interest, lien or claim in or to the property shall be created or shall arise while the construction or repair of such property as aforesaid is in progress shall be deemed and held to be a purchaser or creditor with notice.

Sub-Sec. 2, of Sec. 2, Ch. 4582, Acts 1895.

(b) Upon Personal Property.—There shall be no lien upon personal property as against creditors and purchasers without notice, except under the circumstances and for the time prescribed in Section 2210, and for the amount of indebtedness due to the lienor at the time of the service of the notice provided for by Paragraph 1 of this section.

ARTICLE 4.

ENFORCEMENT OF LIENS.

Remedies against either real or personal property. Sections.....2212-2213
Remedies against personal property only. Section.....2214
Provisions applicable to remedies against either real or personal property. Sections.....2215-2224

2212. (1744.) Remedies against either real or personal property.—By persons in privity with the owner.—All liens provided for by this chapter, either upon real or personal property, shall be enforceable by persons in privity with the owner— Sec. 1744, Rev. Stat. 1892, as amended by Sec. 13, Ch. 5143, Acts 1903.

1. By a retention of possession for a period not exceeding three months of the property upon which the lien has attached, by the person entitled to such lien, if he were in such possession at the time the lien attached.

2. By a bill in equity.

3. By an ordinary suit at law and the levy of the execution obtained therein on the property on which the lien is held.

4. By a suit at law in which the declaration shall state the manner in which the lien arose, the amount for which the lien is held, the description of the property, and a prayer that the property be sold to satisfy the lien. In such suit the judgment for the plaintiff shall be a personal judgment against the defendant as well as declare the lien upon the property, describing it; and shall direct execution against such property, as well as against the property generally of the defendant.

2213. (1744.) By persons not in privity with the owner. A person not in privity with the owner may resort to any of the remedies prescribed by the foregoing section, except paragraph 4; but in every suit at law or in chancery the contractor or the person for whom the labor was performed or the materials furnished must be made a party defendant to the suit; and the judgment or decree may provide for the recovery from the contractor or other person as aforesaid of the amount due by him, and from the owner of the amount due by him to the contractor or other person as aforesaid, at the time of the service of the notice provided for by Section 2211, as well as decree and enforce the lien against the property of such owner for such amount; but only one satisfaction of such judgment shall be had. And although no lien be found to exist and no judgment may be rendered against the con- Amended by Sec. 15, Ch. 5143, Acts 1903.

tractor or other person for whom the labor was performed or the materials furnished for the amount due by him. If personal service in such suit cannot be made upon any defendant, constructive service may be made in the manner and under the rules prescribed for such service in chancery cases.

2214. (1745.) Remedies against personal property only.

1. By Injunction and Attachment.—If any person entitled to a lien under this chapter upon personal property shall have reason to believe that the same is about to be removed from the county in which it may be, he may enjoin the removal of the same, in the manner provided for enjoining the removal of property subject to a mortgage (see Section 2109), or, if the lien shall have been perfected, may attach the same in the manner provided for attachment in aid of foreclosure of mortgages. (See Section 2104.)

2. By Sale Without Judicial Proceedings.—Whenever any person shall entrust to any mechanic or laborer materials with which to construct, alter or repair any article of value, or any article of value to be altered or repaired, such mechanic, or laborer, if such article be completed and not taken away, and the fair and reasonable charges not paid, may, after three months from the time such charges become due, sell the same, and such sale shall be at public auction for cash. But before any such sale such mechanic or laborer shall give public notice of the time and place thereof, by advertisements posted for ten days in three public places in the county, one of which shall be the court house, and another in some conspicuous part of his shop or place of business, and the proceeds of such sale, after payment of charges for construction or repair, with the cost of such sale, shall, if the owner be absent, be deposited with the clerk of the circuit court for such county, where the same shall remain, subject to the order of the person legally entitled thereto, and the clerk shall be entitled to receive from all proceeds so deposited with him five per centum on such proceeds for the care and disbursement thereof.

PROVISIONS APPLICABLE TO REMEDIES AGAINST EITHER REAL OR PERSONAL PROPERTY.

2215. (1746.) Time of trials.—In any of the suits at law hereinbefore provided for, a trial may be had at any time after five days from the filing of the pleas of the defendant. Upon the written request of either party, the judge of the court in which the suit is pending shall fix the day of such

trial, and upon like request order the executive officer of his court to summon from the body of the county a jury to try the issues.

2216. Duty of contractors.—It shall be the duty of any person who may contract to build or repair any house, mill, distillery, manufactory, machinery or other building, or who may sub-contract for all or any part of the construction or repair thereof, to furnish the person or persons having such building constructed or repaired, or in his or their absence, then his or their authorized agent, a correct and complete list of the names of the sub-contractors, mechanics and laborers to be employed in the building or repair of such house or other buildings, the names of all persons who may have furnished materials for the construction or repairs of such building, structure or machinery, and all the persons acquiring a lien upon such house, mill, distillery, manufactory or machinery; and shall furnish a receipt in full for all claims or demands for work done or material furnished upon or for, or a release of such building, mill, distillery, manufactory or machinery from any claim against the same or for any such work done or material furnished. Sec. 2, Ch. 4955, Acts 1901.

2217. Failure of contractor to furnish names.—If any contractor or sub-contractor fail or refuse to furnish the list of names provided for by above section, such failure or refusal may be plead in bar of such contractor's or sub-contractor's recovery against the owner or owners of such building, unless it can be shown that the claims of all sub-contractors, mechanics, laborers and material men, for labor done or materials furnished for the construction or repairs of such building, mill, distillery, manufactory or machinery have been fully paid off and discharged. Sec. 3, Ib.

2218. (1747.) Attorney's fees to be allowed plaintiff.—If the plaintiff shall prevail, the court shall allow him reasonable attorney's fees, to be fixed by the court, not to exceed ten dollars if the amount recovered do not exceed one hundred dollars, and not to exceed ten per cent, of any recovery greater than one hundred dollars.

2219. Execution to issue.—After judgment has been obtained under the provisions of this act, if the amount thereof and all costs be not paid within five days therefrom, execution shall immediately be issued to the sheriff of the county, and the property so attached or levied upon shall be advertised and sold at the regular sales day as now provided by law. Sec. 10, Ch. 4955, Acts 1901.

Sec. 11, Ch. 4955, Acts 1901.

2220. Failure to perform duty.—The sheriff or other officer who shall fail or refuse to properly execute any process directed to him under and in accordance with the provisions of this act, shall be liable for damages in double the amount claimed in such process, to the person or persons who may be injured by such failure or refusal to execute the same.

Sec. 12, Ch. 4955, Acts 1901.

2221. Courts open.—The courts of this State shall always be open to hear and determine causes arising under this law.

2222. Process when returnable, pleas when filed.—All process except in circuit court need not be returned to a rule day, but to any day fixed by the court which will allow ten days after service for such return. The pleas of defendant shall be filed upon return day of the writ.

Sec. 1748, as amended by Sec. 18, Ch. 5143, Acts 1903.

2223. Time of bringing suit.—When there has been no record of a notice of lien, suit to enforce lien (if it exists without such record) must be brought within twelve months from the performance of the work or the furnishing of the materials, and if there has been such record, the suit must be brought within twelve months from the time of such record.

Mechanics' lien.—Married women.—Separate property.—Sale.—Land held in trust.—Smith et al. v. Gamby et al., 43 Fla., 143; 30 So. Rep. 683. Master and servant.—Lien for wages.—Suit in equity.—Misjoinder of parties.—Receivership.—First National Bank of St. Augustine et al. v. Kirby et al., 43 Fla., 376; 32 So. Rep. 881. Rights of sub-contractor.—Hathorne v. Panama Park Co., 44 Fla., 194; 32 So. Rep. 812.

Mechanics' lien law.—Summerlin et al. v. Thompson & Co., 31 Fla., 369; 12 So. Rep. 667; Emmerson & Co. v. Gainey, 26 Fla., 133; 7 So. Rep. 526.

Remedy applies only to rights acquired under this act.—McCarthy v. Harris, 23 Fla., 508; 8 So. Rep. 819. When one such act repeals another.—Barbour v. Van Camp, 26 Fla., 40; 7 So. Rep. 162. May be enforced for labor done or materials furnished after act went into effect, although contract was made before.—Summerlin v. Thompson, 31 Fla., 369; 12 So. Rep. 667. Sufficiency of affidavit.—Ib. Lien cannot be awarded for damages sustained by breach of contract.—St. Johns, etc., R. Co. v. Bartola, 28 Fla., 82; 3 So. Rep. 853. Does not apply to certain bookkeepers.—Warburton v. Coumbe, 34 Fla., 212; 13 So. Rep. 769. When created without notice.—Scott v. Hempel, 33 Fla., 313; 14 So. Rep. 840. Proceeding at law to enforce not unconstitutional.—Emerson v. Gainey, 26 Fla., 133; 7 So. Rep. 526. Provision of act that such liens may be enforced by attachment as provided by law refers to general attachment law.—Strong v. Lake Weir, etc., 25 Fla., 765; 6 So. Rep. 882. Sufficiency fo affidavit.—Ib.; Stearns v. Jordan, 27 Fla., 469; 8 So. Rep. 640. Does not apply to married women's property.—Smith v. Gamby, 43 Fla., 143; 30 So. Rep. 683. An equitable interest subject to.—Bank v. Williams, 38 Fla., 305; 20 So. Rep. 931. Assignment of.—Clarkson v. Louderback, 36 Fla., 660; 10 So. Rep., 887. When lien expires by limitation.—Eddins v. Tweddle, 35 Fla., 107; 17 So. Rep. 66; Howe v. Simmons, 34 Fla., 584; 16 So. Rep. 552.

Allowance of attorneys' fees not unconstitutional.—Dell v. Marvin, 41 Fla., 221; 26 So. Rep. 188. When mechanics' liens are not covered by contractor's bond.—Gato v. Warrington, 37 Fla., 542; 19 So. Rep. 883.

2224. Joinder of suits.—All persons who may have a lien as provided by this act, may join together in suits to enforce their respective liens, in which case the court may allow ten per cent. attorney's fees for the total sum sued for unless the total shall be under one hundred dollars, when an attorney's fee of ten dollars shall be allowed. Sec. 14, Ch. 5143, Acts 1903.

ARTICLE 5.

RELEASE OF LIEN.

2225. (1749.) By filing bond.—Any lienee may release his property from any lien claim thereon under this chapter by filing with the clerk of the circuit court a bond with two good and sufficient sureties, to be approved by the clerk, payable to the person claiming the lien in double the sum claimed, and conditioned for the payment of any judgment which may be recovered on said lien, with costs. Sec. 19, Ch. 5143, Acts 1903.

Release of owner by suit in equity against several claimants under Section 1745, 2.—Trustees, etc., v. Sanford, 17 Fla., 162.

CHAPTER VI.

LANDLORD AND TENANT.

ARTICLE 1.—Provisions relating to recovery of posssession from tenant. Sections.....2226-2234
2.—Provisions relating to recovery of money from tenant. Sections 2235-2247

ARTICLE 1.

PROVISIONS RELATING TO RECOVERY OF POSSESSION FROM TENANT.

Right of entry upon default in rent. Section.....2226
Causes for removal of tenant. Section.....2227
Petition for removal. Section.....2228
Process, service and return. Section.....2229
Judgment without trial. Section.....2230
Trial. Section.....2231
Verdict and judgment after trial. Section.....2232
Costs and fees. Section.....2233
Appeals. Section.....2234

Nov. 21, 1828, Sec. 5.

2226. (1750.) Right of entry upon default in rent.—If any person leasing or re-renting any land or house shall fail to pay the rent at the time it becomes due, the lessor may immediately thereafter enter and take possession of the property so leased or rented.

Ch. 3248, Sec. 1, Feb. 16, 1881.

2227. (1751.) Causes for removal of tenant.—Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from such premises in the manner hereinafter provided in the following cases:

1. Where such person shall hold over and continue in the possession of the demised premises, or any part thereof, after the expiration of his time, without the permission of his landlord.

2. Where such person shall hold over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which such premises are held, and three days' notice in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to such rent on the person owing the same. The service of such notice shall be by delivery of a true copy thereof, or if such tenant be absent from his last or usual place of residence, by leaving a copy thereof at such place.

Ib., Sec. 2.

2228. (1752.) Petition for removal.—The landlord, his legal representative, agent or assigns, applying for the removal of any such tenant, shall make and file with the county judge of the county wherein the premises are situated, a petition in writing, and under oath, stating the facts which so authorize the removal of any tenant, and describing the premises.

Ibid.

2229. (1753.) Process. Service and return.—Upon the filing of such petition the county judge shall issue his summons, describing the premises of which the possession is demanded, and requiring the person in possession, or claiming the possession thereof, forthwith to remove from the same or to show cause before the said judge, within not less than three or more than five days, to be fixed in the summons, why possession of said premises should not be delivered to the applicant.

Such summons shall be served by the executive officer of said court in the manner provided for service of summons ad respondendum.

2230. (1754.) Judgment without trial.—If at the time appointed in said summons no sufficient cause be shown to the contrary the county judge shall enter a judgment that the complainant recover possession of the premises, and issue his warrant within three days thereafter (unless an appeal shall have been taken and properly perfected) to the sheriff of said county commanding him to remove all persons from the premises aforesaid, and to put the said applicant in full possession thereof. Ib., Sec. 3.

2231. (1755.) Trial.—The person in possession of said premises, and any person claiming possession thereof, may at the time appointed in said summons for showing cause, or before, file an affidavit with the county judge denying the facts upon which the said summons was issued, or any of the facts, and the matter therein controverted shall be tried by the judge, unless a jury be demanded, in which case it shall be tried by six legal jurors to be immediately summoned upon the order of the judge and empanelled for that purpose. Ib., Sec. 4.

2232. (1756.) Verdict and judgment after trial.—

1. For the Plaintiff.—If the verdict shall be in favor of the lessor, landlord or other person applying for the possession of said premises, the county judge shall enter a judgment that the complainant recover possession of the premises, and issue his warrant on the third day thereafter (unless a new trial be granted by him) to the sheriff of the county, commanding him to put the landlord, lessor or other person into possession of said premises as hereinbefore directed, which it shall be his duty forthwith to execute. Ib., Sec. 5.

2. For the Defendant.—If, upon a trial of the issues before the judge, or before a jury, the finding of the judge, or the verdict of the jury, shall be in favor of the defendant, the proceedings shall be dismissed, unless an appeal be taken, or unless the judge grant a new trial. Ib. Sec. 6.

2233. (1757.) Costs and fees.—In every case the prevailing party shall have judgment for his costs, and the judge shall issue execution therefor on the third day thereafter, unless an appeal be taken. Ibid.

The costs shall be the same as are by law provided for similar services and fees in justice's court.

2234. (1758.) Appeals.—

1. Manner and Time of Taking.—At any time within two days after the entry of judgment by the county judge, or, if Ib., Sec. 7.

there be a motion for a new trial, at any time within two days after the refusal to grant such new trial, either party may appeal to the next term of the circuit court of the county wherein the trial is had, upon giving a bond, to be approved by the county judge, in such amount as he may fix in his discretion, to indemnify the adverse party for all damages and costs that may accrue to him by reason of the taking of such appeal. Before such appeal shall be granted, the party appealing shall make oath in writing before said judge that said appeal is taken in good faith, and not for delay, and shall first pay all costs incurred in the trial before said judge and in the taking of said appeal.

2. Effect of Appeal.—No appeal taken shall operate as a supersedeas.

ARTICLE 2.

PROVISIONS RELATING TO RECOVERY OF MONEY FROM TENANTS.

Declaration of liens. Sections.....2235-2236
Amount of rent demandable upon refusal of tenant to deliver possession. Section.....2235
Action for use and occupation. Section.....2236

Nov. 21, 1828, Secs. 4, 6.

2235. (1759.) Amount of rent demandable upon refusal of tenant to deliver possession.—When any tenant shall refuse to give up possession of the premises at the end of his lease, the landlord, his agent, attorney or legal representative, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.

All contracts for rent, verbal or in writing, shall bear interest from the time the rent shall become due, any law, usage or custom to the contrary notwithstanding.

Ib., Sec. 7.

2236. (1760.) Action for use and occupation.—Any landlord, his heirs, executors, administrators or assigns, may recover reasonable satisfaction for any house, lands, tenements, or hereditaments held or occupied by any person by his permission, in an action on the case for the use and occupation of the said lands, tenements, or hereditaments when they are not held, occupied by or under an agreement or demise by deed; and if on the trial of any such action, any demise or agreement (not being by deed) whereby a cer-

tain rent was reserved shall appear or be given in evidence, the plaintiff in such action shall not therefor be non-suited but may make use thereof as an evidence of the quantum of damages to be recovered.

Relation of landlord and tenant must be shown to sustain this action.—Ward v. Bull, 1 Fla., 271.

ENFORCEMENT OF LIENS.

Sections 2237-2247

2237. (1761.) Lien for rent.—Every person to whom rent may be due, his heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows: Ch. 3131, Secs. 1, 9, 10. March 11, 1879.

1. Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.

2. Upon all other property of the lessee or his sub-lessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of such property on the premises leased.

3. Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided for.

2238. (1762.) Exemptions from liens for rent.—No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bed clothes and wearing apparel. Feb. 14, 1835, Sec. 6.

Unconstitutional.—Cathcart v. Turner, 18 Fla., 837. What cannot be exempted.—Ib.

2239. (1763.) Lien for advances.—Landlords shall have a lien on the crop grown on rented land, for advances made in money or other things of value, whether made directly by them or at their instance and request by another person, or for which they have assumed a legal responsibility, at or before the time at which such advances were made, for the sustenance or well being of the tenant or his family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling or preparing the crop for market; and they shall have a lien also upon each and every article advanced, and upon all property purchased with money advanced, or obtained by barter or exchange for any articles advanced, for the aggregate value or price of all Ch. 3247 Acts 1879, Sec. 2.

such property or articles so advanced. And such liens upon the crop shall be of equal dignity with liens for rent, and upon the articles advanced shall be paramount to all other liens.

ENFORCEMENT OF LIENS.

2240. (1764.) Affidavit for distress warrant.—Any person to whom any rent or money for advances may be due, his agent or attorney, executor or administrator, may make and file in the court in the county where the land lies, having jurisdiction of the amount claimed, an affidavit stating the amount or quality and value of the rent due for such land, or the advances, and whether it or they are payable in money, cotton or other agricultural product or thing.

Ch. 3131, Sec. 2, March 11, 1879.

Affidavit equivalent to declaration.—Smooth v. Strauss, 21 Fla., 611. Contract for fixed rent not indispensable.—Ib.

2241. (1765.) Distress warrant.—

1. Direction and Form Of.—Upon the filing of such affidavit, the clerk, or the judge if the court have no clerk, shall issue a distress warrant, directed to the executive officer of the court, commanding him to levy on property liable to be distrained for the rent, or the advances, and collect the amount claimed in the affidavit, or the value thereof, and to summon the said defendant to appear before the court at a date fixed in the writ not more than ten days from the issuance of the writ.

Ibid.

Warrant may cover both claim for rent and advances.—Blanchard v. Raines' extr., 20 Fla., 467.

2. Levy of Writ.—The officer to whom the writ is directed shall execute the same by service on the defendant at least five days before the return day, and by levy on property distrainable for such rent or advances, if to be found in his jurisdiction. If the property is not to be so found, but is in another jurisdiction, he shall deliver the writ to the proper officer in said other jurisdiction; and such other officer shall execute said warrant by distraining said property, and shall deliver the same to the proper officer of the court in which the proceedings were instituted, to be disposed of according to law, unless he is ordered by the court from which the writ emanated to hold such property and dispose of the same in his jurisdiction according to law, as in other cases of distress. If the defendant cannot be found, the levy upon the property shall suffice as the service upon him.

Ch. 3721, Sec. 3, May 19, 1887.

Last clause not unconstitutional.—Blanchard v. Raines' extr., 20 Fla., 467.

2242. (1766.) Replevy by defendant.—The property so distrained may at any time be restored to the defendant upon his giving bond to the officer levying such distress warrant, payable to the plaintiff, with two or more good and sufficient sureties to be approved by such officer in double the value of the property levied on, such value to be fixed by the officer, conditioned for the forthcoming of the property restored, to abide the final order of the court; or it may be restored to the defendant on his entering into bond with two or more good and sufficient sureties, to be approved by the officer making the levy, conditioned for the payment to the plaintiff of the amount or value of the rental or advances which may be adjudicated to be payable to such plaintiff. Judgments may be entered against the sureties on such bonds in the manner and with like effect as provided in Section 2128.

Ch. 3131, Sec. 3, March 11, 1879, as amended by Sec. 1, Ch. 4408, Acts 1895.

2243. (1767.) Judgment by default.—If the defendant shall not appear upon the return day of the writ and file the affidavit provided for in Section 2244, the clerk, or the judge if the court have no clerk, shall ascertain what rent or advances is due to the plaintiff, and the value thereof, and shall enter judgment for the same by default, with costs, against the defendant, and shall also enter judgment against the sureties on his bond as provided for in Section 2242, (as hereby amended) if the property has been restored to the defendant, and execution shall issue and be enforced as in other cases.

Sec. 1767, Rev. Stat. 1892, as amended by Sec. 2, Ch. 4408, Acts 1895.

2244. (1768.) Trial, verdict, judgment and writ of error. In case the defendant shall appear and file his affidavit that the rent or advances, or any part thereof claimed, is not due, a trial without other written pleadings shall be had upon the return day of the writ, or upon such other day as the court or judge shall fix, and a jury (unless a trial by jury is waived) shall be sworn to well and truly try, and a true verdict render, whether any, and if any, what rent or advances is due the plaintiff, as alleged in his affidavit, and the value of the same. If the verdict of the jury, or the finding of the court, be for the plaintiff, judgment shall be rendered against the defendant for the amount or value of the rental or advances, including interest and costs, and judgment shall also be rendered against the sureties on the defendant's bond as provided for in Section 2242, if the property has been restored to the defendant, and execution shall issue and be enforced as in other cases. If the verdict of the jury, or the finding of the court, be for the defendant, the proceeding shall be dismissed, and the defendant shall have judgment

Sec. 1768, Rev. Stat., 1892, amended by Sec. 3, Ch. 4408, Acts 1895.

and execution against the plaintiff for costs. Writs of error may be taken by either party to the proper appellate court, and such appeals shall operate as a supersedeas upon the same conditions as other writs of error in actions at law.

Ch. 3131, Acts 1879, Sec. 5.

2245. (1769.) Sale of the property distrained.—If the verdict and judgment be for the plaintiff, and the property in whole or in part shall not have been replevied, the same, or such part as is not restored, shall be sold and the proceeds applied upon the payment of the execution of the plaintiff. If, however, the rental, or any part thereof be due in cotton or other agricultural products, and the property distrained, or any part of it, be of a similar kind to that claimed in the affidavit, the property of such similar kind, up to a quantity to be adjudged of by the officer holding the execution (not exceeding that claimed in the affidavit), may be, at the request of the plaintiff, delivered to the plaintiff as a payment on his execution.

When any property levied upon is sold, it shall be advertised at least ten days, in the same manner as is provided by law for the advertisement of personal property for sale under execution. All property so levied upon may be sold on the leased premises, or at the court house door.

If the defendant shall, before the sale, appeal, and make such appeal effectual as a supersedeas, and pay all costs accrued up to the time that the supersedeas becomes operative, the property shall be restored to him, and there shall be no sale.

Ib., Sec. 6.

In case any property be sold to satisfy any rent payable in cotton or other agricultural product or thing, the officer shall settle with the plaintiff at the value of such rental at the time it became due.

Ib., Sec. 7.

2246. (1770.) Claims by third person.—Any third person claiming any property so distrained may interpose and prosecute his claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

Sec. 1, Ch. 4107, Acts 1895.

2247. Set-off.—In actions of distress for rent defendants may set up in defense any claim or demand which might be pleaded by way of set-off or recoupment in any ordinary action at law, and with like effect.

Tenant may show that his landlord's title has expired or been extinguished since tenancy began.—Robertson v. Biddell, 32 Fla., 304; 13 So. Rep. 358; Winn v. Strickland, 34 Fla., 610; 16 So. Rep. 606. When may disclaim landlord's title.—Wilkins v. Pensacola City Co., 36 Fla., 36; 18

So. Rep. 20. An assignee of goods takes them subject to rent liens.—Fox v. June, 26 Fla., 276; 8 So. Rep. 449.

Recoupment. Tenant may recoup for damages sustained by breach of covenant of the landlord.—Livingston v. L'Engle, 27 Fla., 502; 8 So. Rep. 728. Contract of sale stated a rental contract.—Blanchard v. Raines' extr., 20 Fla., 467. A contract to pay rent indispensable.—Ib.

A covenant restricting use binding on under lessee.—Dunn v. Barton, 16 Fla., 765. Loss of property does not excuse payment of rent.—Cox v. Downie, 14 Fla., 51; Robinson v. L'Engle, 13 Fla., 482.

Distress.—Lien for rent and advances may be enforced by a single warrant.—Blanchard v. Raines' executrix, 20 Fla., 467.

What exempt from.—Smith v. Gufford, 36 Fla., 481; 18 So. Rep. 717; Hodges v. Cooksey, 33 Fla., 715; 15 So. Rep. 549; Schofield v. Liody, 35 Fla., 1; 16 So. Rep. 780.

TITLE VIII.

OF COMMON LAW PROCEEDINGS REGULATED BY STATUTE.

CHAPTER 1.—Of habeas corpus. Sections.....2248-2257
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CHAPTER 1.

HABEAS CORPUS.

Application for, and issuance of writ. Section..... 2248
Service of. Section..... 2249
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Compelling return. Section..... 2251
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2248. (1771.) Application for and issuance of writ.—Whenever any person detained in custody, whether charged with a criminal offence or not, shall, by himself or by some other person in his behalf, apply to the Supreme Court of the State of Florida or to any justice thereof, or to any circuit judge, in vacation or in term time, for a writ of habeas corpus, and shall show by affidavit or evidence probable cause to believe that he is detained in custody without law-

Ch. 3129, Sec. 1, March 11, 1879.

ful authority, it shall be the duty of the court, the justice or judge to whom such application shall be made forthwith to grant the writ, signed by himself, directed to the person in whose custody the applicant is detained, and returnable immediately before such court, justice or judge, or any of said courts, justices or judges, as the writ issued may direct.

In all cases where it shall appear necessary, the court or judge granting the writ shall previously require bond, payable to the Governor, with sufficient security, executed in such manner and in such reasonable penalty as such court, justice or judge shall prescribe, conditioned for the payment of such charges and costs as may be awarded against the prisoner, and that he will not escape by the way. Such bond shall be filed with the papers in the case, and may be sued on in the name of the Governor for the benefit of any person interested therein. In the event of inability to give bond for the payment of charges and costs, he may be permitted, in lieu therof, to make a deposit in such amount as the court, justice or judge may require.

What is and is not function of writ.—Ex parte Bowen, 25 Fla., 214; 6 So. Rep. 65.

Ib., Sec. 2.

2249. (1772.) Service of writ.—Such writ, when issued, shall be served by the sheriff of the county in which the petitioner is alleged to be detained, upon the officer or other person to whom it is directed, or in his absence from the place where the prisoner is confined, on the person having the immediate custody of the prisoner. In case where the sheriff of the county is the person holding the party detained, a delivery to or receipt of the writ by him shall be sufficient service thereof.

Ibid.

2250. (1773.) The return to the writ.—It shall be the duty of him on whom the writ shall be executed, without delay, to bring the body of the prisoner, or cause it to be brought, before the court, justice or judge before whom the writ is made returnable, and at the same time to certify to the cause of the detention.

2251. (1774.) Compelling return and production of body.—

Ib., Sec. 3.

1. Civil Liability.—Any person failing to return the writ so served upon him, with the cause of the prisoner's detention, or to bring the body of the prisoner before the court, justice or judge, according to the command of the writ, for three days after such service, or when the prisoner is to be brought more than twenty miles, for so many days more as

will be equal to one day for every twenty miles of such further distance, shall forfeit and pay to the prisoner the sum of three hundred dollars, the right to recover which shall not cease by the death of either or both of the parties.

2. By Proceedings by the Court.—A justice or judge in vacation may take the same steps to enforce obedience to any writ of habeas corpus as may be taken in term time by any court having jurisdiction over such writs, and in cases pending before the Supreme Court, or either of the justices thereof, writs for the enforcement of such obedience may be directed to the sheriff or other lawful officer of any county in the State. Ib., Sec. 4.

2252. (1775.) Effect of the return.—

1. Generally.—The return made to the writ may be amended, and shall not be taken to be conclusive as to the facts stated therein, but it shall be competent for the court, justice or judge before whom such return is made to examine into the cause of the imprisonment or detention, to receive evidence in contradiction of the return, and to determine the same as the very truth of the case shall require. Ib., Sec. 6.

Reception and examination of evidence upon return.—Ex parte Harfourd, 16 Fla., 283. Limit of inquiry when return shows petitioner under arrest on warrant of extradition.—Ex parte Howell, 20 Fla., 806. Prior arrest not necessarily a bar.—Ib. Court cannot inquire into validity of affidavit for requisition.—Kurtz v. State, 22 Fla., 36. Court may admit to bail after indictment for capital offence.—Finch v. State, 15 Fla., 633; Holly v. State, 15 Fla., 688.

What witnesses to be examined in indictment for murder.—Rigdon v. State, 41 Fla., 303; 26 So. Rep. 711.

Habeas Corpus.—Return of officer to may be controverted.—Ex parte Henry Pitts, 35 Fla., 149; 17 So. Rep. 76.

2. In Cases of Contempt.—When, on the return of the writ, the cause of detention shall appear to have been a contempt, plainly and specifically charged in the commitment by some court officer or body having authority to commit for the contempt so charged and for the time stated, it shall be the duty of the court or judge before whom the writ is returnable forthwith to remand the prisoner, if the time for detention for contempt has not expired.

2253. (1776.) Procurement of evidence.—In vacation the justice or judge shall have the same power to compel the attendance of a witness to give evidence upon the trial as a court would in term time; and whenever either in term or vacation it shall be inconvenient to procure the personal attendance of a witness, his affidavit, taken upon reasonable notice to the adverse party, may be received in evidence, Ib., Sec. 7.

and subpoenas may be directed to the sheriff or other lawful officer of any county in the State.

Ib., Sec. 8.

2254. (1777.) Hearing and judgment.—The court, justice or judge before whom the prisoner shall be brought shall without delay proceed to inquire into the cause of his imprisonment, and shall either discharge him, admit him to bail or remand him to custody, as the law and the evidence shall require; and shall moreover either award against the prisoner the charges of his transportation, not exceeding fifteen cents per mile, and the costs of the proceedings, or shall award the costs in his favor, or shall award no costs or charges against either party, as shall seem right.

Habeas Corpus.—Error.—Transcript.—Interlocutory judgment.—Hart v. Cotten, 44 Fla., 172; 31 So. Rep. 817.

The clerk of the court in which such proceedings are taken may issue execution for the costs and charges awarded by a judgment rendered in vacation in the same manner as if rendered in term time.

Ib., Sec. 8

2255. (1778.) Filing of papers and entry of judgment.—In cases before a circuit judge the petition and the papers in the cause shall be filed with the clerk of the circuit court of the county in which the prisoner is detained and the judgment shall be entered of record upon the minutes of the court; and in cases before the Supreme Court or a justice thereof the papers shall be filed with the clerk of the Supreme Court, and the judgment entered upon the minutes of the court.

Ib, Sec. 9.

2256. (1779.) Effect of judgment.—The judgment so entered of record shall be conclusive until reversed in the manner hereinafter provided for, and no person remanded by such judgment while the same continues in force shall be at liberty to obtain another habeas corpus for the same cause, or by any other proceeding to bring the same matter again in question except by a writ of error or by action of false imprisonment; nor shall any person who shall be discharged from confinement by such judgment be afterward confined or imprisoned for the same cause, unless by order or judgment of a court of competent jurisdiction.

Ib., Sec. 10, as amended by Sec. 1, Ch. 4920, Acts 1901.

2257. (1780.) Writ of error to judgment.—The judge hearing the cause, or a justice of the Supreme Court, shall grant to any party or person aggrieved by the judgment, including the State of Florida, or any political sub-division thereof, or any officer of the State of Florida, or any county or municipality in said State, or any person, a writ of error

returnable to the next term of the Supreme Court, or to the court in term, if the writ is applied for during the session of the court, which writ shall be heard and determined as other cases; and the trial of such writs of error shall have preference in the Supreme Court over all other cases. And such writs of error shall be granted in criminal as well as in civil cases, and from the review of judgments and orders discharging persons from custody or arrest upon any criminal charge, as well as orders committing or remanding any such person to custody: Provided, however, That no such writ of error shall operate as a supersedeas in any criminal case to an order or judgment discharging persons from custody.

Reviewable by Supreme Court only by writ of error.—Tyler v. Painter, 16 Fla., 144; Ex parte Edwards, 11 Fla., 174. Practice as to notice in such cases is in discretion of court.—Tyler v. Painter, 16 Fla., 144; Ex parte Finch, 15 Fla., 630. Only petitioner can have writ on discharge from arrest.—Gagnet v. Reese, 20 Fla., 438. Does not lie to reverse a conviction upon an indictment merely defective.—Ex parte Prince, 27 Fla., 196; 7 So. Rep. 659. In a capital case defendant entitled to produce evidence to show offense bailable.—Benjamin v. State, 25 Fla., 675; 6 So. Rep. 433. When question of excessive bail will not be inquired into.—Warrace v. State, 28 Fla., 371; 9 So. Rep. 718. What will be reviewed in contempt cases.—Ex parte Senior, 37 Fla., 1; 19 So. Rep. 652. What will not be. —Ib.

Cannot serve as a writ of error.—Randall v. Tillis, 43 Fla., 43; 29 So. Rep. 540; Ex parte Bowen, 25 Fla., 214; 6 So. Rep. 65. When discharged on the facts.—Ex parte Brandon, 26 Fla., 143; 7 So. Rep. 528; Ex parte Harris, 26 Fla., 77; 7 So. Rep. 1. Petitioner will be discharged when complaint charges no criminal offence.—Ex parte Bailey, 39 Fla., 737; 23 So. Rep. 552. Ex parte affidavits not evidence in.—Ex parte Pitts, 35 Fla., 149; 17 So. Rep. 76.

Court will award proper custody of minor.—Miller v. Miller, 38 Fla., 227; 20 So. Rep. 989.

CHAPTER II.

QUO WARRANTO—WRITS OF.

Proceedings by Attorney-General—power of court to make parties. Section 2258
Proceedings by persons other than the Attorney-General. Sections..2259-2260
Control of Attorney-General over action. Section..... 2261

PROCEEDINGS BY THE ATTORNEY-GENERAL.

2258. (1781.) Power of the court to make parties.—In all proceedings upon writs of quo warranto, or upon informa- Ch. 1874, Sec. 1, Feb. 2, 1872.

tion in the nature of such writs, or in civil actions instituted to obtain the remedies obtainable by such proceedings, where the Attorney-General institutes the action and does not make all the persons claiming title to the office parties, it shall be within the power of the court to make parties defendant of all persons claiming the office and not made parties by the Attorney-General. But the said persons so desiring to be made parties shall be required to set forth by petition under oath a prima facie case of right and title to the office before the court can be required to make the order, and to give security to the satisfaction of the court for the payment of all costs which may be awarded against them.

PROCEEDINGS BY PERSONS OTHER THAN ATTORNEY-GENERAL.

Ib., Sec. 2.

2259. (1782.) Right of claimant upon refusal of Attorney-General.—Any person claiming title to an office which is exercised by another shall have the right, upon refusal by the Attorney-General to institute proceedings in the name of the State upon such claimant's relation, or upon the Attorney-General's refusal to file a complaint setting forth his name as the person rightfully entitled to the office, to file an information or institute an action in the name of the State against the person exercising the office, setting up his own claim. In this case the court is authorized and required to determine the right of the claimant to the office, if he so desires. However, in this, as well as in all other proceedings of this character, no person shall be adjudged entitled to hold an office except upon full proof of his title to the office.

Quo warranto.—State ex rel. Smith v. Anderson, 26 Fla., 240; 8 So. Rep. 1.

Governed by rules governing other civil actions—proper pleas in—what burden on respondent.—State ex rel. v. Saxon, 25 Fla., 342; 5 So. Rep. 801. Only Attorney-General can bring quo warranto against municipal corporations.—Robinson v. Jones, 14 Fla., 256. Court cannot inquire into motive of Attorney-General in filing.—State v. Gleason, 12 Fla., 190. Writ of issues upon demand of Attorney-General.—Ib.

Ib., Sec. 3.

2260. (1783.) Judgment in such suits.—In all cases where an individual institutes an action without the consent of the Attorney-General, the judgment shall be conclusive as between the parties other than the State; such judgment shall be no bar to any quo warranto proceeding by the State, nor shall a judgment in such proceeding instituted by the Attorney-General be a bar to proceedings by any claimant other than the parties thereto. The party recovering the judgment shall, however, be entitled to exercise the office

until removed by quo warranto proceedings, or until his right thereto shall otherwise cease.

Judgment of ouster, when rendered.—State ex rel. v. Herndon, 23 Fla., 287; 2 So. Rep. 4.

When Quo Warranto Lies.—Lies as to franchises pertaining to private corporations.—Davidson v. State ex rel., 20 Fla., 784. Lies through relator have no title.—Lake v. State ex rel., 18 Fla., 501. Lies to inquire into qualifications of pilots.—State v. Jones, 16 Fla., 306. Pleadings and proceedings.—What answer must set out.—State v. Gleason, 12 Fla., 190. Sufficiency of answer.—State ex rel. v. Saxon, 25 Fla., 792; 6 So. Rep. 858. Answer must set up facts.—State ex rel. v. Day, 14 Fla., 9. Frame and sufficiency of plea.—State v. Jones, 16 Fla., 306. Common law proceedings allowed in absence of statutory direction.—State v. Gleason, 12 Fla., 190.

The power of the Supreme Court to issue writs of quo warranto embraces information in the nature of quo warranto.—State v. Anderson, 26 Fla., 24; 8 So. Rep. 1.

Circuit courts have jurisdiction to try the legality of the election of a mayor of a city.—Buckman v. State, 34 Fla., 48; 15 So. Rep. 697.

The burden is upon the defendant to show he holds the office rightfully.—State v. Saxon, 25 Fla., 342; 5 So. Rep. 801. Where a demurrer to an answer is sustained judgment of ouster should be entered against the defendant.—State v. Herndon, 23 Fla., 287; 2 So. Rep. 4. Great particularity is required in the answer or plea.—Enterprise v. State, 29 Fla., 128; 10 So. Rep. 740; State v. Philips, 30 Fla., 579; 11 So. Rep. 922. What is sufficient allegation of incorporation of a town.—State v. Anderson, 26 Fla., 240; 8 So. Rep. 1. Illustration of an insufficient information.—State v. Kennedy, 26 Fla., 608; 8 So. Rep. 310.

Non-usurpavit not a good plea, the facts must be set out.—State v. Saxon, 25 Fla., 342; 5 So. Rep. 801; State v. Anderson, 26 Fla., 240; 8 So. Rep. 1; Buckman v. State, 34 Fla., 48; 15 So. Rep. 697.

Effect of demurrer to information.—Attorney-General v. Connors, 27 Fla., 329; 9 So. Rep. 7. The right of trial by jury is a constitutional right.—Van Dorn v. State, 34 Fla., 62; 15 So. Rep. 701; Buckman v. State, 34 Fla., 48; 15 So. Rep. 497.

CONTROL OF ATTORNEY-GENERAL OVER ACTION.

2261. (1784.) Power over dismissal.—Where the Attorney-General instituted an action setting forth the name of the person rightfully entitled, or whenever there may be filed an information upon the relation of a party claiming title, the Attorney-General shall not have the right to dismiss such proceedings without the consent of the claimant, but the court shall investigate the claim and determine the right, if so desired by the person upon whose relation the information is filed; and such claimant may have counsel of his own choice to control the proceedings in his behalf. Ib., Sec. 4.

CHAPTER III.

PROHIBITION, WRITS OF.

Practice and proceedings relating to. Sections.....2262-2266
Power of circuit judge in vacation. Section..... 2267
Penalty for disobedience of writ. Section..... 2268

PRACTICE AND PROCEEDINGS.

The practice in the courts of this State having jurisdiction to issue writs of prohibition shall be as follows:

Ch. 3002, Sec. 2, Feb. 10, 1879.

2262. (1785.) Suggestion and contents thereof.—The plaintiff or plaintiffs shall file a suggestion stating the nature of the case, and the proceedings in the inferior court, tribunal or body presuming to exercise jurisdiction, sought to be prohibited, concluding with a prayer for judgment, and that the State's writ of prohibition may be granted in that behalf. When the matters suggested appear upon the face of the proceedings in the inferior court, then the transcript of the record of all the proceedings in the case, duly certified, shall accompany the suggestion, and where the matters suggested are not matters of record, then the truth thereof shall be verified by affidavit of the party instituting the proceedings or of his agent, or attorney-at-law, or in fact.

Ib., Sec. 3.

2263. (1786.) Issuance, effect and service.—Upon the filing of the suggestion, the court, if in its judgment a prima facie case is made, shall grant a rule directed to the inferior court and to the parties plaintiff in the suit therein pending to show cause why the writ of prohibition should not issue as prayed for. Such rule shall be a supersedeas, and shall be served upon the inferior court and the parties to whom it is directed at such time as the court may direct, and an answer or return shall be made thereto by the inferior court and the parties at the time prescribed in the rule. In case of failure to make such answer or return it may be enforced by attachment for contempt.

Ib., Sec. 7.

2264. (1787.) Service of rule.—In all cases in which the plaintiff in the inferior court is a non-resident of the county in which the action or matter is pending, service of the rule may be made upon his attorney-at-law in the pending suit or controversy, or in such manner as may be prescribed by the court.

Ib., Sec. 4.

2265. (1788.) Proceedings upon answer.—Upon the filing of the answer or return, the person prosecuting the writ

may reply, take issue or demur to the matters relied upon by such defendant, and the like proceedings (except in the matter of notices or motions, and of the hearing) shall be had for the trial of issues of law or fact, joined between the parties as in personal actions.

2266. (1789.) Proceedings upon default.—In case of default in making answer or return, the party prosecuting the writ may, instead of compelling an answer by attachment have a hearing upon the matter of suggestion, and the court, after hearing the proof, shall render judgment either that a prohibition absolutely do issue restraining the court and the parties from proceeding in such action or matter, or that the proceedings be dismissed, in which last event a copy of the judgment of dismissal shall be certified to the inferior court. Ib., Sec. 5.

POWER OF CIRCUIT JUDGES IN VACATION.

2267. (1790.) Power to summon jury, etc.—In cases arising in the circuit court, all the proceedings, including the final judgment, may be had before the judge either during term or in vacation, and the courts before which such proceedings in prohibition are instituted shall have power to summon a jury, in case it is necessary, in such manner as they may deem proper. Ib., Sec. 6.

PENALTY FOR DISOBEDIENCE OF WRIT.

2268. (1791.) Punishment of contempt.—Any person who shall disobey any writ of prohibition issued under this chapter shall be punishable as for contempt, by fine and imprisonment, at the discretion of the court. Ib., Sec. 9.

Powers of circuit court to issue.—Singer Mfg. Co. v. Spratt, 20 Fla., 122. Supreme Court will not issue to circuit court after appeal.—Sherlock v. Mayor, 17 Fla., 93. Jurisdiction of Supreme Court after appeal.—Ib. Jurisdiction of Supreme Court confined to common law writ.—Ib. And extends only against exercise of judicial power.—Ib. Does not lie where inferior court has jurisdiction.—State v. Hocker, 33 Fla., 283; 14 So. Rep. 586; State v. Smith, 32 Fla., 476; 14 So. Rep. 43; State v. Malone, 40 Fla., 129; 23 So. Rep. 575.

Will lie where inferior court has not jurisdiction of the subject matter.—State v. White, 40 Fla., 299; 24 So. Rep. 160.

THIRD DIVISION.

ESTATES OF DECEDENTS.

TITLE 1.—Devolution of estates. Sections.....2269-2333
2.—Representation of estates. Sections.....2334-2389
3.—Administration of estates. Sections.....2390-2447

TITLE I.

DEVOLUTION OF ESTATES.

CHAPTER 1.—Devolution by will. Sections.....2269-2289
2.—Devolution by descent. Sections.....2290-2305
3.—Devolution by dower. Sections.....2306-2320
4.—Devolution by escheat. Sections.....2321-2333

CHAPTER I.

DEVOLUTION OF ESTATES BY WILL.

ARTICLE 1.—Who may make wills. Sections.....2269-2270
2.—To what property to apply. Section..... 2271
3.—Wills of real property. Sections.....2272-2273
4.—Wills of personal property. Sections.....2274-2278
5.—Contest of will before probate. Sections.....2279-2283
6.—Probate of wills. Sections.....2284-2288
7.—Record of wills. Section..... 2289

ARTICLE 1.

WHO MAY MAKE WILLS.

Sections 2269-2270

2269. (1792.) Persons over twenty-one years of age.— Every person of the age of twenty-one years, being of sound

Nov. 20 1828. Sec. 51.

mind, shall have power by last will and testament in writing, to devise and dispose of his lands, tenements and hereditaments, and of his estate, right, title and interests in the same in possession, remainder or reversion, and of personal property.

Technical words unnecessary to create fee simple estate by devise.—Robinson v. Randolph, 21 Fla. 629. Parol testimony to enlarge or alter estate devised, inadmissible.—Ib.

Ch. 3249, Sec. 1, Feb. 11, 1881.

2270. (1793.) Married women.—A married woman may dispose of her property, both real and personal, by last will and testament in the same manner as if she were not married, even though she be a minor.

ARTICLE 2.

TO WHAT PROPERTY TO APPLY.

2271. (1794.) Construction of wills.—Every general or residuary devise or bequest in a will shall be construed to apply to the property owned by the testator at the time of his death, unless restricted in the will to that owned by him at the time of the execution of the will.

ARTICLE 3.

WILLS OF REAL ESTATE.

Sections 2272-2273

Nov. 20, 1828, Sec. 51.

2272. (1795.) Form of.—Every last will and testament disposing of real estate shall be signed by the testator, or by some other person in his presence and by his expressed directions, and shall be attested and subscribed in the presence of the said testator by two or more witnesses, or else it shall be utterly void and of non-effect.

Mere interest in commissions does not disqualify executor as a witness.—Myer v. Fogg, 7 Fla., 292.

Ib., Sec. 52.

2273. (1796.) Revocation of.—No such devise or disposition of lands, tenements or hereditaments, or any part or

clause thereof, shall be revokable by any other will or codicil, unless the same be in writing and made as aforesaid; but every such last will and testament, devise or disposition, may be revoked by any other writing signed by the testator, declaring the same to be revoked, or operating as a revocation thereof by law, or by burning, cancelling, tearing or obliterating the same by the testator or by his direction and consent, or by the act and operation of law.

ARTICLE 4.

WILLS OF PERSONAL PROPERTY.

Generally. Sections.....2274-2275
Nuncupative wills. Sections.....2276-2778

GENERALLY.

2274. (1797.) Form of.—All wills of personal property shall be in writing, and signed by the testator or some other person in his presence, and by his express direction.

2275. (1798.) Revocation of.—No will or writing concerning any personal property shall be revoked nor shall any clause, devise or bequest therein be altered and changed by any words, or will by words of mouth only, unless the same be in the life of the testator committed to writing, and after the writing thereof, read unto the testator and allowed by him, and unless such writing, reading and allowance be proved to have been done by three disinterested and credible witnesses. Ib., Sec. 56.

A will executed before Revised Statutes of 1892, with two witnesses held valid as to personalty inoperative as to real estate.—Hays v. Ernest, 32 Fla., 18; 13 So. Rep. 451.

Revocation by marriage and birth of child.—Belton v. Summer, 31 Fla., 139; 12 So. Rep. 371; Colcord v. Conroy, 40 Fla., 97; 23 So. Rep. 561. When legal title to real estate devised vests in legatees and not in the executor.—Simmons v. Spratt, 26 Fla., 449; 8 So. Rep. 123; Youngs' admrs. v. McKinne's admr., 5 Fla., 542. Before Revised Statutes of 1892, no one could devise lands in this State that he did not own at the time of execution of the will.—Frazier v. Boggs, 37 Fla., 307; 20 So. Rep. 245. Governed by lex loci rei sitae.—Ib.

A creditor who accepts a devise in a will in satisfaction of his claim has no rights superior to creditors.—Jones v. Shoemaker, 41 Fla., 332; 26 So. Rep. 191. Title of devisee does not vest until testator's death.—Ib.

Homestead exemption not the subject of.—Caro v. Gormley, 45 Fla.,

203; 32 So. Rep. 812; Scull v. Beatty, 27 Fla., 426; 9 So. Rep. 4; Brokaw v. McDougald, 20 Fla., 312; Wilson v. Friedenburg, 21 Fla., 386.

Authority to executors to continue testator business.—When will sufficient for, effect of.—Friedenburg v. Wilson, 20 Fla., 359.

Circumstances to be considered in construing.—Lines v. Darden, 5 Fla., 51. Conditions destroying estate construed strictly.—Jenkins v. Merritt, 17 Fla., 304. In restraint of marriage not favored.—Ib.

No technical words necessary.—Robinson v. Randolph, 21 Fla., 629. What sufficient to embrace corpus of testator's property.—McGehee v. Alba, 9 Fla., 382. What conditions constitute a trust.—Sibley v. Maria, 2 Fla., 553; McHardy v. McHardy, 7 Fla., 301.

Intention of testator how parol not received to establish.—Young v. McKinnee's admr., 5 Fla., 542. Must be gathered from the whole will taken together.—Russ' Admr. v. Russ, 9 Fla., 105.

Rules of interpretation.—Robinson v. Randolph, 21 Fla., 629; McLeod's Admr. v. Dell's extr., 9 Fla., 427.

Title to personalty bequeathed.—Lott v. Meacham, 4 Fla., 144.

Words child and children construed.—McLeod's Admr. v. Dell's Extr., 9 Fla., 427; Russ' Admr. v. Russ, 9 Fla., 105.

NUNCUPATIVE WILLS.

Ib., Sec. 53.

2276. (1799.) Requisites of.—No noncupative will shall be good which is not proved by the oaths of three witnesses present at the making thereof, nor unless it be proved by the said witnesses that the testator at the time of pronouncing the same, did desire the persons present, or some of them, to bear witness that such was his will, or to that effect, nor unless such nuncupative will was made in the time of the last sickness of the deceased.

Lands cannot be devised by nuncupative will.—McLeod v. Dell, 9 Fla., 451.

Ib., Sec. 54.

2277. (1800.) Time of proof.—After six months after the speaking such testamentary words, no testimony shall be received to prove any nuncupative will, unless the said testimony, or the substance thereof, shall have been reduced to writing and sworn to before some judicial officer of this State within six days from the making of said will.

Ib., Sec. 55.

2278. (1801.) Probate of.—No letters testamentary or probate of any nuncupative will shall be granted within sixty days at least from the death of the testator, nor shall any nuncupative will be received to be proved until citation has issued and has been published and served upon the widow or next of kin, in order that they may contest the same if they think fit.

ARTICLE 5.

CONTESTS OF WILLS BEFORE PROBATE.

Sections 2279-2283

2279. (1802.) Petition.—In case any person interested shall desire to contest the probate of any will offered for probate he may do so in the following manner: He shall file, with the county judge his petition in writing, setting forth in a plain, direct and concise manner the facts constituting the grounds of such contest, and praying that such will be not admitted to probate. If he be apprehensive that the will may be admitted to probate without his knowledge, he may file in the office of the county judge a caveat, and after the filing of the same the county judge shall not admit the will to probate until he shall have given at least ten days' notice to the caveator, or some other person to be named in the caveat, if such caveator, or some other person be found in the county. Ch. 3886, Sec. 1, May 27, 1889.

No one but heir or distributee can contest.—Meyer v. Fogg, 7 Fla., 292.

2280. (1803.) Citation and service.—Upon the filing of such petition it shall be the duty of the judge to issue a citation to the executor or executrix, or in case there be no executor or executrix, then to the devisees, legatees or other beneficiaries under said will, citing him, her or them to appear before the said county judge upon a day to be fixed by him, not less than fifteen days from the service of such citation. In case such executor or executrix, devisee, legatee, or other beneficiary under said will resides in this State, then such citation shall be served by the sheriff of the county where such executor or executrix, devisee, legatee or other beneficiary resides; and when such executor or executrix, devisee, legatee or other beneficiary under said will resides beyond the limits of this State, or the residence of such person is unknown, the service shall be had by publication in some newspaper published in the county where such will is offered for probate for such time as the county judge may direct, not less than once each week for four consecutive weeks. Ib., Sec. 2.

2281. (1804.) Answer and trial.—The party so served with such citation shall be held to file his answer or demurrer to the contestant's petition within ten days after the appearance day named in such citation, unless further time be granted by the county judge for good cause shown. Upon an issue of fact being made up the county judge shall pro- Ib. Sec. 3.

ceed to hear and determine the matter at such time as he may fix.

Ib., Sec. 4.

2282. (1805.) Examination of witnesses.—At such hearing such witnesses as the parties may produce shall be examined orally and their testimony reduced to writing. In the event that the personal attendance of any witness cannot be obtained, or if it be manifestly inconvenient for any witness to attend, the written deposition of such witness or witnesses, taken by virtue of a commission issued by the county judge, may be submitted and received in evidence.

Ib., Sec. 5.

2283. (1806.) Practice upon issues of law and fact.—Either party to such contest may answer or demur to any pleading of the opposite party; may both answer and demur to such pleading, or may answer to a portion and demur to the residue thereof. In all such cases where issues both of law and fact shall be raised, the matters of law so raised shall be argued and determined either before or at the time of the hearing upon the issues of fact, as the court may deem proper.

ARTICLE 6.

PROBATE OF WILLS.

Sections 2284-2288

Nov. 20, 1828, Sec. 57.

2284. (1808.) Proof of, time of.—Last wills and testaments, both of real and personal property, may be admitted to probate upon the oath of any person appointed executor thereto, or where no executor is appointed, or where the executor is interested in the estate bequeathed, of any other credible person having no interest under the will, that he verily believes the writing exhibited as the last will and testament to be the true last will and testament of the deceased. Probate may be granted in term or vacation by the county judge.

Letters may issue to one of two executors if other renounce.—Stewart v. Mathews, 19 Fla., 752. The executor of an executor is executor of will of the first testator, unless he decline its execution at the time of qualification.—Hart v. Smith, 20 Fla., 58; Ib., 17 Fla., 767. Executor of guardian is trustee of ward's funds.—Bloxham v. Crane, 19 Fla., 163.

Nov. 21, 1829, Sec. 3.

2285. (1809.) When executor not allowed to prove.—No will shall be admitted to probate upon the oath of any

person appointed executor thereto, when it shall appear by said will, or otherwise, that said person so appointed is interested in the estate therein bequeathed, or any part thereof.

2286. (1810.) Effect of probate.—The probate of wills so far as concerns any personal estate shall be conclusive as to the validity of the will of which it is the probate, and the probate of wills so far as concerns real property shall be prima facie evidence of the validity of wills of which it is the probate, in any suit or controversy in relation to or concerning the property thereby devised or bequeathed. Nov. 20, 1828, Sec. 58.

2287. (1811.) Probate of foreign wills.—Probate of wills (conforming to the law of this State in the form and manner of execution), duly obtained and granted by any court in any of the States, Territories or districts of the United States, or in any foreign country, which relates to property in this State, shall be admitted to record in the county judge's court, and shall, when so recorded, have the same force and effect as to the disposition of the property thereby devised or bequeathed as the probate of wills executed in this State. Ib., Sec. 59.

Payment of legacy under will admitted to probate be afterward revoked.—LeBaron v. Fountleroy, 2 Fla., 2776.

Place of probate.—For place of probate see Sections 2391 and 2392.

2288. (1813.) Revocation of probate.—Any person interested may make application to the court in which the probate of any will may have been granted for a revocation of such probate, by petition to the said court, which petition shall set forth the ground upon which revocation is demanded; and a copy thereof, together with a citation to appear and answer the same shall be served upon the executor or administrator with the will annexed at least ten days before the time to which such citation may be returnable, and the party cited to answer the said petition shall file his answer to the same on or before the expiration of the said ten days; and the said court shall, upon the petition and answer of the parties, and the proof adduced by them, which shall in all cases be taken as in case of contests before probate as provided in Section 2279, confirm or revoke the said probate according to the law and justice of the case. Ib., Sec. 58.

ARTICLE 7.

RECORD OF WILLS, ETC.

Ib., Sec. 11.

2289. (1814.) To be recorded by county judge.—All wills of which probate shall be granted shall be deposited in the office of the county judge, and by him fairly and correctly recorded in a book kept for that purpose, together with the letters testamentary or of administration granted thereon; and all letters of administration on the goods, chattels, rights and credits of persons dying intestate shall also be recorded in the office of the said judge, and, on payment of his fees, he shall give certified copies thereof under seal of the court; and if any judge shall deliver such letters testamentary or of administration without recording the same, he shall forfeit to the party injured double the damages which he may have sustained for default of such record having been duly made.

Certified copy of will without certificate of admission to probate is not evidence.—Coffee v. Groover, 20 Fla., 64.

CHAPTER II.

DEVOLUTION BY DESCENT.

ARTICLE 1.—Who may inherit and transmit inheritance. Sections...2290-2292
2.—Certain estates of inheritance prohibited. Sections.....2293-2294
3.—Rules of descent as to real estate. Sections.....2295-2303
4.—Rules of distribution as to personal property. Section 2304
Inheritance from persons of color. Section..... 2305

ARTICLE 1.

WHO MAY INHERIT AND TRANSMIT INHERITANCE.

Nov. 17, 1829, Sec. 12.

2290. (1815.) Persons in being.—No right in an inheritance shall accrue to any persons whatever, other than to children of the intestate, unless they be in being and capable in law to take as heirs at the time of the intestate's death.

Ib., Secs. 17, 21.

2291. (1816.) Aliens.—An alien of any foreign county or nation whatsoever may devise and bequeath and inherit and transmit inheritance in real and personal property as if he

were a citizen of the United States; and in making title by descent it shall be no bar to a party that the intestate or any ancestor through whom he derives his descent from the intestate is or has been an alien.

2292. (1817.) Bastards.—Bastards shall be capable of inheriting or of transmitting inheritance on the part of their mother in like manner as if they had been lawfully begotten of such mother. Ib., Sec. 17.

ARTICLE 2.

CERTAIN ESTATES OF INHERITANCE PROHIBITED.

2293. (1818.) Entailed estates.—No real estate shall be entailed in this State. Ib., Sec. 20.

2294. (1819.) Estates by survivorship.—The doctrine of the right of survivorship in cases of real estate and personal property held by joint tenants, shall not prevail in this State. Ibid.

ARTICLE 3.

Inheritance generally. Section..... 2295
Inheritance from infants. Section..... 2296
Descent of homesteads. Section..... 2297
Inheritance by husband's or wife's kindred. Section..... 2298
Inheritance by half-blood. Section..... 2299
Inheritance per capita and per stirpes. Section..... 2300
Inheritance by adopted children. Section..... 2301
Hotchpot. Section 2302
Rights and powers of parceners. Section..... 2303

RULES OF DESCENT AS TO REAL ESTATE.

2295. (1820.) Inheritance generally.—Whenever any person having title to real estate of inheritance shall die intestate as to such estate, it shall descend in parcenary to the male and female kindred, in the following course, that is to say: Nov. 17, 1829, Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, March 6, 1845, Sec. 6 Ch. 1878, Sec. 2, Feb. 27, 1872.

To the children or their descendants and the husband, if the decedent be a married women and the husband survive her.

If there be no children or their descendants, and the de-

cedent be a married woman and her husband survive her, all the property, real and personal, shall go to the husband; and if there be no children or their descendants, and the decedent be a married man and his wife survive him, all his property, real and personal, shall go to the wife.

If there be no children and no husband or wife, then to the father.

If there be no father, then to the mother, brothers and sisters and their descendants, or such of them as there may be.

If there be no brother nor sister, nor their descendants, the inheritance shall be divided into moieties, one of which shall go to the paternal and the other to the maternal kindred in the following course, viz.:

First, to the grandfather.

If there be no grandfather, then to the grandmother, uncles and aunts on the same side or their descendants, or such of them as there be.

If there be no grandmother, uncle or aunt, nor their descendants, then to the great-grandfathers, or great-grandfather, if there be but one.

If there be no great-grandfather, then to the great-grandmothers, or great-grandmother, if there be but one, and the brothers and sisters of the grandfathers and grandmothers and their descendants, or such of them as there be.

And so in other cases without end, passing to the nearest lineal male ancestors, and for the want of them to the lineal female ancestors, in the same degree, and the descendants of such male and female ancestors, or to such of them as there may be.

Question of survivorship in a common calamity.—Smith v. Croom, 7 Fla., 81. Grandchildren take by succession and matters affecting their immediate parents' interest will affect them also.—Towles v. Roundtree, 10 Fla., 299.

Nov. 17, 1829, Secs. 10, 11, as amended by Sec. 1, Ch. 4970, Acts 1901.

2296. (1821.) Inheritance from infants.—Whenever an infant shall die without issue, leaving no husband or wife surviving, having title to any real estate of inheritance, it shall descend in the following course, that is to say:

First, to the father of such infant, if the father survives.

Second, if there be no father surviving, then to the mother if the mother survives.

Third, if there be no father or mother surviving, then to the brothers and sisters or their descendants, if any surviving.

Fourth, if there be no father, mother, brothers, sisters or their descendants, then the title to all such real estate of

inheritance, shall descend according to the general rules of descent prescribed by statute. If any such infant leave a husband or wife surviving, such husband or wife shall take all such infant's property.

2297. Descent of homesteads.—Whenever a person who is the head of a family residing in this State, and having his homestead herein, shall die and leave a widow surviving him, but no children, the homestead shall descend to the widow and shall not be the subject of devise by last will and testament; but if there be any child or children surviving him, then the widow shall be entitled to dower or a child's part in such homestead, as she may elect to take a child's part, in other cases, and should she not elect to take a child's part, she shall be confined to dower in such homestead property; but she may take under the will, such other property as may be given to her thereby or dower therein as she may elect. Sec. 1, Ch. 4730, Acts 1899.

This section taken with Section 2304 furnishes rule for distribution of infants' personal estate derived from father or mother.—Bushnell v. Dennison, 13 Fla., 77. (Overruling Jones v. Dexter, 8 Fla., 276). Descent from the father or mother interpreted to mean an immediate, not a mediate, descent.—Smith v. Croom, 7 Fla., 81.

2298. (1822.) Inheritance by husband and wife's kindred.—And where, for want of issue of the intestate, and of father, mother, brothers and sisters, and their descendants, the inheritance is before directed to go by moieties to the paternal and maternal kindred; if there should be no such kindred on the one part, the whole shall go to the other part, and if there be no kindred either on the one part or the other, and the wife or husband of the intestate be dead, the whole shall go to her or his kindred in the like course as if such wife or husband had survived the intestate and then died entitled to the estate. Nov. 17, 1829, Sec. 13.

2299. (1823.) Inheritance by half-blood.—In the cases before mentioned where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood to the intestate, and other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood, but if all be of the half blood, they shall have whole portions, only giving to the ascendants (if there be any) double portions. Ib., Sec. 14.

2300. (1824.) Inheritance per capita and per stirpes.—And where the children of the intestate, or his mother, brothers or sisters, or his grandmother, uncles and aunts or any of Ib., Sec. 15.

his female lineal ancestors living with the children of his deceased lineal ancestors, male and female, in the same degree, come into the partition, they shall take per capita, that is to say, by persons; and where a part of them being dead, and a part living, the issue of those dead have right to partition, such issue shall take per stirpes or by stocks, that is to say, the shares of their deceased parents.

Ch. 3920, Acts 1889, Sec. 1.

2301. (1825.) Inheritance by adopted children.—Whenever a child has been adopted as the heir of another by and under the laws of any State other than the State of Florida, and such child shall afterward become a citizen of this State, the same shall be considered the heir, and entitled to inherit, according to the laws of Florida as if the adoption had been according to the laws of Florida.

Nov. 17, 1829. Sec. 16.

2302. (1826.) Hotchpot.—When any of the children of the person dying intestate shall have received from such intestate, in his lifetime, any real or personal estate by way of advancement, and shall choose to come into the partition of the estate with the other parceners, such advancement, both of real and personal estate, shall be brought into hotchpot with the whole estate, real and personal, descended; and such party bringing into hotchpot such advancement as aforesaid, shall thereupon be entitled to his or their proper portion of the whole estate so descended, both real and personal; and the value of the estate so advanced as aforesaid shall be estimated at the time of advancement and not at the death of the testator.

Advancements not chargeable with interest when brought into hotchpot.—Towles v. Roundtree, 10 Fla., 299. Advancement to son-in-law is advancement to his wife.—Ib.; Lindsay v. Platt, 9 Fla., 150. What considered such advancement.—Ib. Husband may receipt for advancement intended for wife, whether or not she die before her father.—Towles v. Roundtree, supra.

Ib., Sec. 10.

2303. (1827.) Right and powers of parceners.—One parcener may maintain an action of waste against another, but no parcener shall have or possess any privilege over another in any election, division or matter to be made or done concerning lands which shall have descended to them.

ARTICLE 4.

RULES OF DISTRIBUTION AS TO PERSONAL PROPERTY.

Nov. 20, 1828, Sec. 49.

2304. (1828.) Rule stated.—All personal property belonging to a decedent, and all property to be distributed by

an executor or administrator, shall be distributed according to the law regulating the inheritance of real estate.

Distribution must be according to law of descent in force when right to distribution becomes vested.—Bushnell v. Dennison, 13 Fla., 77; Jones v. Dexter, 8 Fla., 276. On distributee's death, right of action for distributive share is vested in personal representatives.—Deans v. Willcoxon, 25 Fla., 980; 7 So. Rep. 163. Husband where no children entitled to all property and to administration where wife dies a minor.—Coogler v. Rogers, 25 Fla., 853; 7 So. Rep. 391. Exempt property descends to widow and heirs exempt from debts of decedent under statutes regulating dower and descents.—Hinson v. Brooth, 39 Fla., 333; 22 So. Rep. 687; Godwin v. King, 31 Fla., 525; 13 So. Rep. 108. Statute regulating division of estate into moieties and distribution between kindred of the whole blood and those of half-blood construed.—Estes v. Nicholson, 39 Fla., 759; 23 So. Rep. 490.

Bastards inherit from the mother.—Keech v. Enriquez, 38 Fla., 597; 10 So. Rep. 91. But not from kindred of the mother.—Williams v. Kimball, 35 Fla., 49; 16 So. Rep. 783. The offspring of the marriage of slaves terminating before they became free have no inheritable blood.—Ib.

ARTICLE 5.

INHERITANCE FROM PERSONS OF COLOR.

2305. (1829.) Who to inherit.—Whenever upon the death of any person of color seized or possessed of real or personal estate, there are persons in being who would inherit said property or any portion thereof under the several statutes of descent in this State, but who are prevented from doing so on account of the legal incapacity of said persons of color to contract marriage in a state of slavery, which said estate would otherwise escheat to the State, all the right, title and interest of the State of Florida is hereby vested in and waived in favor of those persons who would have inherited said estate, if said parties would have been competent to contract marriage. Ch. 1566, Sec. 1, Dec. 12, 1866.

The fact that the said parties shall have failed to obtain a license to marry, or shall have failed to be married according to the forms of law, shall in no case affect the operation of this section, but the same shall be held to apply to all cases wherein the parties were known as husband and wife. Ib., Sec. 2.

Declared unconstitutional in Adams v. Sneed, 41 Fla., 152; 25 So. Rep. 893.

CHAPTER III.

DEVOLUTION BY DOWER.

ARTICLE 1.—Rights of widow in her husband's estate. Sections.....2306-2311
2.—Proceedings for assignment of dower. Sections.....2312-2320

ARTICLE 1.

RIGHTS OF WIDOW IN HER HUSBAND'S ESTATE.

Dower and child's part. Sections.....2306-2309
Rights other than dower and child's part. Section.....2310-2311

DOWER AND CHILD'S PART.

Nov. 7, 1828, Sec. 1.

2306. (1830.) Dower in lands provided for.—When any person shall die intestate, or shall make his last will and testament and not therein make any express provision for his wife by giving and devising unto her such part or parcel of real and personal estate as shall be fully satisfactory to her, such widow may signify her dissent thereto in the circuit or county judge's court of the county wherein she resides at any time within one year after the probate of such will; and then in that case, she will be entitled to dower in the following manner, to wit: One-third part of all the lands, tenements and hereditaments of which her husband died seized and possessed, or had before conveyed whereof she had not relinquished her right of dower as provided by law, which said third part shall be and enure to her proper use and behoof in and during the term of her natural life. In which said third part shall be comprehended the dwelling house in which her husband shall have been accustomed most generally to dwell next before his death, together with the offices, out-houses, buildings and other improvements thereunto belonging or appertaining. If, however, it should appear to the judge of the court to which application is made that the whole of the said dwelling house, outhouses, buildings and other improvements thereunto appertaining cannot be applied to the use of the widow without manifest injustice to the children or other heirs, then such widow shall be entitled to such part, not less than one-third part, as the court may deem reasonable and just.

Dower not a right derived through husband, but an interest cast by law upon wife.—Smith v. Hines, 10 Fla., 258. Widow's estate is for life.—Woodberry v. Mathison, 19 Fla., 778. No dower in shares of land company sold by husband.—McDougal v. Hepburn, 5 Fla., 568. Nor in real estate sold under

executory contract before marriage, when purchaser becomes entitled to deed after husband's death.—Rain v. Roper, 15 Fla., 121. Otherwise when deceased's personal representative has contract rescinded.—Nor in partnership real estate, if claim conflicts with rights of surviving partner or firm creditors.—Loubat v. Nourse, 5 Fla., 350. Relinquishment as to first mortgage no bar to dower as against second mortgagee owning first mortgage; he may hold possession against widow claiming dower until she redeem.—Ib. Time for election unlimited at common law; effect of section is to remedy by limit of one year.—Stephens v. Gibbs, 14 Fla., 331. If election not made within year, will obligatory upon widow.—Ib. Wilson v. Freidenberg, 21 Fla., 386. Election not set aside after four years because of large losses and consequent insolvency of estate.—Stephens v. Gibbs, 14 Fla., 331.

2307. (1831.) Dower in personalty provided for.—When a husband shall die intestate, or shall make his last will and testament and not make provisions therein for his wife, as expressed in Section 2306, she shall be entitled to a share in the personal estate in the following manner, to-wit: If there be no children, or if there be but one child, she shall be entitled to one-half; but if there be more than one child, she shall be entitled to one-third part in fee simple, and such claim shall have preference over all others, and the said share shall be free from all liability for the debts of the decedent. Ib., Sec. 2.

Word "dower" includes widow's share of personalty.—Woodberry v. Mathison, 19 Fla., 778. "Fee simple" construed.—Ib. Widow has same inchoate right in personalty as in realty, except in personalty "before conveyed."—Smith v. Hines, 10 Fla., 258. She cannot be deprived of her right by will.—Ib. Otherwise by bona fide sale or gift.—Ib. Mere devices by husband to deprive wife of dower inoperative.—Ib.

2308. (1832.) The widow's election as to whole estate.—If a man die intestate in this State without children, being at the time of his death possessed of real and personal property, or either, the wife shall take the whole estate, (as provided in Section 2295) or dower, at her election. Ch. 1878, Sec. 1, Feb. 27, 1872.

2309. (1833.) The widow's election as to child's part.—

1. Provision For.—In all cases in which the widow of a deceased person shall be entitled to dower, she may elect to take in lieu thereof a child's part. Feb. 8, 1838, Sec. 1.

Widow electing a child's part, where there is no child, takes one-half of realty in fee and one-half of personalty absolutely.—Harrell v. Harrell, 8 Fla., 46. (This decision now applicable to testate estates only.) Claim of widow electing child's part against administrator for account, is a widow making the election and not as heir.—Sanderson v. Sanderson, 17 Fla., 820.

2. Time Of.—Such election shall be made within twelve months after the probate of the will or granting letters of administration or she shall be confined to her dower. Ibid.

3. Effect of the Election.—If a widow take dower she shall be entitled only to a life estate in the real property, to Ib., Sec. 2.

return at her death to the estate of her deceased husband for distribution; if she takes a child's part, she shall have in the property set apart to her a fee simple estate in the real property, and an absolute right to the personal property set apart to her, with power to control or dispose of the same by will, deed or otherwise.

Dower.—Widow entitled to in homestead and personal property, exemptions.—Godwin v. King, 31 Fla., 525; 13 So. Rep. 108.

Adulterous wife barred.—Henderson v. Chaires, 25 Fla., 26-37; 6 So. Rep. 164. Circuit court has jurisdiction to try.—Ib. Mesne profits not allotted by commissioners.—Ib.; Same v. Same, 35 Fla., 423; 17 So. Rep. 574.

How divested of wife who executed mortgage on real estate.—Roan v. Holmes, 32 Fla., 295; 13 So. Rep. 339. Status of purchaser at execution sale against husband as to dower.—Ib.

Mesne profits whether and to what extent recoverable.—Ib.

Dower.—When suit for not barred by limitation.—Henderson v. Chaires, 35 Fla., 423; 17 So. Rep. 574. In real estate sold by husband wife not relinquishing.—Reddick v. Meffert, 32 Fla., 409; 13 So. Rep. 894.

ARTICLE 2.

RIGHTS OTHER THAN DOWER AND CHILD'S PART.

Feb. 7, 1828, Sec. 5.

2310. (1834.) Before assignment of dower.—The widow may retain the full possession of the dwelling house in which her husband most usually dwelt next before his death, together with out-houses, offices or improvements thereto belonging, free from molestation or rent, until she shall have her dower assigned to her.

Ch. 1437, Sec. 5, Dec. 6, 1864.

2311. (1835.) Articles in addition to dower.—The widow of an intestate shall be entitled to keep her wearing apparel and such household goods and farming utensils, provisions and clothing as may be necessary for her maintenance and that of her family, to be set apart by the appraisers, who shall have special regard for the ability of such widow and children to provide for and maintain themselves; and the aforesaid articles shall not be considered and taken as forming a part of the widow's dower in any case.

PROCEEDINGS FOR ASSIGNMENT OF DOWER.

Proceedings by the widow. Sections.....2312-2317
Proceedings by the heirs or other persons interested. Sections....2318-2319
Confirmation or rejection by the court. Section..... 2320

PROCEEDINGS BY THE WIDOW.

2312. (1836.) Petition for dower.—Any widow claiming dower may, in default of the heirs or representatives for two months to file a petition, as provided in Section 2319, file her petition in the circuit court or court of the county judge in the county where her husband shall have usually dwelt next before his death, setting forth the nature of her claim and particularly specifying the lands, tenements and hereditaments in which she claims dower, and praying that her dower may be allotted to her. Nov. 7, 1828, Sec. 3; Ch. 380, Sec. 3, Jan. 22, 1851.

The proceeding is special and only the relief authorized in the section can be granted. Further relief can be had only by bill.—Milton v. Milton, 14 Fla., 369. If wife die before allotment, her representative may have dower allotted.—Woodberry v. Matherson, 19 Fla., 778.

2313. (1837.) Notice of application.—She shall give ten days' notice previous to the application for action on such petition to the executors or administrators, by serving them with a copy of said petition; and where there are no executors or administrators, or where they do not reside in the county of the residence of such widow, or where the widow shall be executrix or administratrix, then she shall give said notice by advertisement in a newspaper published in the said county once a week for four successive weeks. Nov. 7, 1828. Sec. 4.

2314. (1838.) Proceedings on the petition.—The proceedings upon such petition shall be in a summary way, and the court shall at the day fixed in the notice proceed to hear and determine as to it shall seem just and right. Ibid.

Court can try title to dower, but judgment concludes only the parties.—Henderson v. Chaires, 25 Fla., 26; 6 So. Rep. 164. Executor may contest validity of marriage.—Ponder v. Graham, 4 Fla., 23. To sustain plea under Stat. Westm. 2, 12 Edw. 1 Ch. 34, willful desertion by the wife and her adultery during desertion must be proved.—Henderson v. Chaires, 25 Fla., 26; 6 So. Rep. 164. Wife cannot be questioned as to confessions of unfaithfulness made to husband.—Ib.

2315. (1839.) Procurement, oath and action of commissioners.—Upon such hearing the court shall issue a writ to the sheriff, commanding him to summon five discreet freeholders as commissioners, connected with the parties neither by consanguinity or affinity, and entirely disinterested, who upon oath, (which oath the sheriff is authorized to administer), shall allot and set off by metes and bounds to the said widow one-third part, according to quantity and quality, of all the lands, tenements and hereditaments in said county, and shall put her in possession of the same, which possession shall vest in her an estate for her natural life. Ib., Sec. 3.

Commissioners cannot allow mesne profits from death of husband. The allowance must be made in chancery.—May v. May, 7 Fla., 207. Widow dow-

able of several tracts may be assigned dower in one, equal to her entire interest.—Milton v. Milton, 14 Fla., 369. Such allotment not opened to allow additional interest in same tract on discovery of other lands of which widow is dowable.—Ib.

Ibid.

2316. (1840.) To set off portion of personal estate.—The said commissioners shall also at the same time allot and set off to such widow her portion of the personal estate of which her husband died possessed, and to which by law she shall be entitled, which part or portion shall enure to such widow, her heirs, executors, administrators and assigns forever.

Irregular to decree in part for widow's dower in personalty until executor's accounts are settled.—Chaires v. Sheppard, 7 Fla., 77. Judgment in dower for unascertained sum of money void.—May v. May, 7 Fla., 207. Mesne profits or proceeds of personalty accruing after husband's death cannot be allotted by commissioners.—Henderson v. Chaires, 25 Fla., 37; 6 So. Rep. 164. Dower in realty and personalty may be allotted by separate orders.—Ib.

Ibid.

2317. (1841.) Proceedings when lands lie in different counties.—When she has claim to dower in lands lying in different counties she may proceed in the circuit or county judge's court of the county where such land may lie, and make recovery in manner hereby directed.

PROCEEDINGS BY THE HEIRS OR OTHER PERSONS INTERESTED.

Ch. 380, Sec. 1, Jan. 22, 1851.

2318. (1842.) The duty to assign dower, etc.—It shall be the duty of the representatives of any estate, the heir at law or other person having the next estate of freehold or inheritance in any lands or estate, real or personal, of which the widow is entitled to dower, or a child's part, provided he be of lawful age, to lay off and assign such dower as soon as practicable after the death of the husband of such widow; and in cases where any heir at law, or other person having the next estate of freehold or inheritance in lands or estate, real or personal, as aforesaid, shall be a minor, it shall be the duty of the county judge, after the lapse of two months next after the decease of said husband, to require the representative of any such estate to proceed in causing the dower or child's part of said widow to be assigned and set over to her.

Ib., Sec. 2.

2319. (1843.) Method of assignment.—For the purpose of enabling such person to lay off and assign dower or child's part, he may file a petition in the circuit court or county judge's court, in the county where her husband shall have usually dwelt next before his death, for the laying off, setting apart and assigning the same, which shall after due notice to the widow, to be done in the form and manner pre-

scribed by law for laying off, setting apart and assigning dower upon the application of the widow.

CONFIRMATION OR REJECTION BY THE COURT.

2320. (1844.) Decree or effect of.—In all cases of assignment of dower or child's part the court to which application is made shall either confirm or reject the allotment or assignment made, and such decree of confirmation or rejection shall be considered a final decree, and may be appealed from within the same time and in the same mode and manner and to the same tribunal as appeals from the decision of said court in other cases. Ib., Sec. 4.

Notice of application to confirm unnecessary.—Henderson v. Chaires, 25 Fla., 37; 6 So. Rep. 164. Report allotting lands not embraced in petition must be recommitted.—Brokaw v. McDougald, 20 Fla., 212.

RELINQUISHMENT OF DOWER.

(See Section 2461.)

CHAPTER IV.

DEVOLUTION BY ESCHEAT.

ARTICLE 1.—Proceedings where there is an administrator. Sections..2321-2326
2.—Proceedings where there is no administrator. Sections..2327-2332
3.—Reclamation by owner of escheated property. Section.....2333

ARTICLE 1.

PROCEEDINGS WHEN THERE IS AN ADMINISTRATOR.

2321. (1845.) Notice.—Every administrator, immediately on taking out letters of administration on any estate where it is generally believed and reported that the deceased left no lawful heirs, shall cause to be published a notice in a newspaper published in the county in which the letters were granted, once each week for four consecutive weeks, containing the name of the intestate, and, as near as may be, a description of his person, and of the place where he died, or was known to reside, and also a statement of the appraised amount of his estate. Nov. 20, 1826, Sec. 42.

Ibid.

2322. (1846.) Disposition of personal estate.—Such administrator shall, after the expiration of one year from the time of taking out letters of administration, if no heir or legal representative shall appear, pay into the treasury of the State, under the direction of the county judge granting letters of administration, all the proceeds of the personal estate of such intestate, retaining ten per cent. for his personal trouble in administering said estate, together with all actual disbursements by him necessarily made in and about the administering of said estate; and said court shall, in directing the proceeds of said estate to be paid into the State treasury on payment of the same, cause an entry to be made of record, specifying the amount so paid into the treasury, and also the name of the intestate and of the administrator, together with a copy of the notice published as (by Section 2321) directed; and shall thereupon discharge such administrator of the amount so paid, together with ten per cent. allowed him and the necessary disbursements as aforesaid.

DISPOSITION OF REAL ESTATE.

Ib., Sec. 43.

2323. (1847.) Sale of.—When an intestate shall have died seized or possessed of any real estate in this State, it shall be the duty of such administrator at the expiration of two years, if no heir or legal representative shall appear, to apply to the county judge of the county where such estate may lie for an order for the sale of such estate; and upon the production by the administrator of the letters of administration, and a copy of the notice published as (by Section 2321) directed, together with a certificate from the court from which said letters of administration issued, under the seal of the said court (if other than the court granting the order of sale), certifying that the said estate is such as comes within the purview of the law of escheat, such judge shall order the sale of such real estate after advertisement of said sale in some public newspaper printed in the county where the land lies once each week for four successive weeks.

Ib., Sec. 44.

2324. (1848.) Terms of sale and deed.—On the sale of such real estate as aforesaid, such administrator may give a credit of one year to the purchaser who shall be the highest bidder, upon such purchaser giving bond with security approved by the administrator for the payment of the purchase money; and upon the confirmation of such sale by the county judge, execute to the purchaser a deed conveying all the right, title and interest which said intestate had in said estate.

2325. (1849.) Disposition of proceeds.—Such administrator shall pay into the State treasury all the proceeds by him received on the sale of such estate, in the same manner as directed in Section 2322, retaining for his trouble the same compensation as therein allowed on the whole proceeds of said sale, together with all necessary disbursements by him actually made in and about the selling of such estate. Ibid.

2326. (1850.) Prohibition of purchase by administrator.—No administrator on said estate shall, either directly or indirectly, become the purchaser of the whole or any part of the lands or tenements sold as aforesaid, and when the said administrator shall give a deed for said lands so sold, he shall make oath that he is neither directly nor indirectly interested in the purchase of said lands or tenements, or any part thereof, which oath shall be filed with the county judge before the sale shall be confirmed by him. Ibid.

ARTICLE 2.

PROCEEDINGS WHERE THERE IS NO ADMINISTRATOR.

2327. (1851.) Sheriff to ascertain and report.—The sheriffs of the several counties in the State shall ascertain the nature, situation and amount of all estates, real or personal, which have escheated or reverted, or may hereafter escheat or revert to the school fund on account of the defect of heirs or next of kin, and for which no owner shall appear and establish his claim, and for the administration of which no letters of administration have been granted, within a year and a day from the death of the owner of such property, and shall report the same without delay to the Commissioner of Agriculture. Ch. 344, Sec. 1, Dec. 23, 1850.

2328. (1852.) Sheriff to sell and dispose of.—The Commissioner, when the estate mentioned shall be other than money, shall require the sheriff to dispose of the same in such manner as may be thought expedient by the Commissioner, the sale of lands, however, to be made subject to all the rules, regulations and restrictions which are now or may be hereafter imposed upon the sale of seminary lands. Ib., Sec. 2.

2329. (1853.) Recovery of persons claiming possession. Whenever any property is ascertained to rightfully belong to the school fund, and the person in possession refuses to Ib., Sec. 4.

give it up to the sheriff on demand, the State attorney of the circuit in which the property is situated shall, when required to do so by the Commissioner, enter a suit for said property, and prosecute the same to a final recovery; all money derived from these sources to be paid by the sheriff to the Commissioner, to be paid by him into the treasury of the State.

The State attorney shall receive five per cent. on the amount thus recovered.

Ib., Sec. 6.

2330. (1854.) Sheriff to report to county superintendent.—The sheriff shall place in the hands of the county superintendent of schools, within one month of the time at which any money is received as aforesaid, a statement of the amount of money received by him, the time at which and the source from which said money was received, which statement shall be kept by the county superintendent, and a copy thereof forwarded by him without unnecessary delay to the State Superintendent.

Ib., Sec. 7.

2331. (1855.) Accounting by the sheriff.—The sheriff shall pay over such money as may come into his possession in performance of the duty herein required of him, within one month of the time in which he receives said money; and failing to do so, he shall pay interest on said money at the rate of twelve per cent. per annum from the time it becomes due to the school fund until paid, and shall also be liable on his bond for double the amount withheld; and the State attorney shall sue upon his bond upon the request of the Commissioner so to do.

Ib. Sec. 5.

2332. (1856.) Compensation of sheriff.—For the said services rendered by the sheriff he shall receive from the Treasurer, on the warrant of the Comptroller, two and one-half per cent. of the net proceeds of the amount paid into the treasury, after the payment of all expenses.

ARTICLE 3.

RECLAMATION BY OWNER OF ESCHEATED PROPERTY.

Nov. 20, 1828, Sec. 45.

2333. (1857.) Mode of repayment.—If any heir or legal representative of any intestate shall appear and prove his right to the estate after the payment of the proceeds thereof into the State treasury, as aforesaid, the Treasurer shall order the money so paid into the treasury forthwith to be

reimbursed to said heir or legal representative out of the State treasury.

TITLE II.

REPRESENTATION OF ESTATES—ADMINISTRATORS AND EXECUTORS.

CHAPTER 1.—Qualifications and appointment of. Section.....2334-2344
2.—Oath of. Sections.....2345-2346
3.—Bond of. Sections.....2347-2353
4.—Compensation of. Section..... 2354
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6.—Actions against, personally. Sections.....2356-2358
7.—Settlement of accounts of, and discharges. Sections..2359-2369
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CHAPTER I.

QUALIFICATION AND APPOINTMENT OF.

Minors not qualified, other disqualifications. Sections.....2334-2336
Non-residents, married women. Sections.....2337-2338
Preference in appointment. Section..... 2339
Effect of appointment of debtor as executor. Section..... 2340
Administrator ad litem, and proceedings. Sections.....2341-2344

2334. (1858.) Minors not qualified.—No person shall be qualified or permitted to act as an executor, executrix, administrator or administratrix unless he or she be twenty-one years of age or upwards; if a minor be named executor in any last will and testament, letters testamentary shall be granted to the other executor or executors, if any be named in said will or testament, if none other be named, letters of administration with the will annexed shall be granted to the next of kin, or to such other person as the judge shall appoint according to the provisions hereafter mentioned, until said minor shall come of full age, when he shall be admitted to act and be qualified as an executor; in such case the letters of administration, if any shall have been granted, shall be revoked, and the said administrator shall render a true and faithful account of his administration to the county judge's court, and surrender the said estate to the said executor. Nov. 20, 1828, Sec. 5.

Allegation in petition that applicant for letters is of full age unnecessary to jurisdiction.—Emerson v. Ross, 17 Fla., 122. Executor's title is derived from will and exists independently of the letters.—Gregory v. Harrison, 4

Fla., 56. On death of one executor, executorship devolves on survivor, and no interest passes to executor of deceased executor.—Hart v. Smith, 17 Fla., 767.

2335. The above section shall not apply to a minor whose disabilities have been removed, as provided by law.

2336. Other disqualifications.—No person who has been convicted of an infamous offence, or who from intemperance or want of understanding is incompetent to discharge the duties, shall be appointed administrator.

2337. Non-residents.—If residing in the United States, may be appointed administrator or have letters testamentary upon the same terms and conditions and subject to the same rules and restrictions as residents of this State. Every such non-resident executor or administrator shall have his post-office address recorded with the county judge and shall designate some resident as his agent or attorney, whose name and address shall also be likewise recorded.

2338. Married women.—A married woman may be appointed administratrix, but before she shall be so appointed her husband shall file his written consent to such appointment with the county judge, who shall record the same.

Ib., Sec. 7.

2339. (1859.) Preference in appointment of administrator.—Letters of administration shall be granted to the representatives of the intestate who apply for the same, preferring first the husband or wife, and next such others as are entitled to distribution of the estate of the intestate in the order of consanguinity; and if no such person apply for administration, or if one applying cannot comply with the provisions of this chapter, after citation duly published for the term of four weeks, once a week, in some newspaper printed in the county where the intestate died, then the said judge may grant administration to a creditor of the intestate or some fit person; but if any will shall, after granting letters of administration, be produced and duly proved, the aforesaid letters of administration shall be revoked and letters testamentary granted to the executors of said will, if they be ready and willing to qualify; if not, letters of administration previously granted shall stand good, and the will be thereto annexed.

Petition is regular method for applying for letters.—Robinson v. Epping, 24 Fla., 237; 4 So. Rep. 812; but such method not jurisdictional.—Ib. Widow's right to administration conditioned on her application. If she fails to apply, others may be appointed.—Rawlins v. Rawlins, 18 Fla., 345. On distributees' application for letters, previous citation unnecessary.—Emerson v. Ross, 17 Fla., 122. In absence of any personal representative, creditor

cannot have receiver appointed.—Walker v. Drew, 20. Fla., 908. Citation need not state name of proposed administrator.—Robinson v. Epping, 24 Fla., 237; 4 So. Rep. 812. Sufficiency of adjudication of due publication.—Ib. Whether adjudication founded in sufficient evidence not inquired into collaterally.—Ib. Evidence of adjudication of grant of letters.—Ib. Proper evidence of appointment is the letter or certified copy.—Davis v. Shuler, 14 Fla., 438. Administrator cannot be attorney for creditors.—Knox v. Spratt, 19 Fla., 817.

2340. (1860.) Effect of appointment of debtor as executor.—If any person shall appoint his debtor to be the executor of his last will and testament, such appointment shall not, either in law or equity, be construed to operate as a release or extinguishment of any debt due to the testator, unless the same be so expressly declared in said last will and testament. Feb. 15, 1834, Sec. 3.

2341. Administrators ad litem, how appointed.—Whenever in any proceeding before the county judge or in equity in the circuit court, it is necessary that the estate of a deceased person be represented, and there is no executor or administrator of such estate, or if the executor or administrator is interested adversely to said estate, or in such chancery proceeding is enforcing his own debt or claim against the same, it shall be the duty of the court in which the proceeding is pending to appoint an administrator ad litem without bond for that particular proceeding. Whenever the facts authorizing such appointment appear of record, or are otherwise made known to the court, said proceeding shall then be further maintained, prosecuted or defended in so far as said estate is concerned by said administrator ad litem and in his name as such.

2342. Recovery of judgment.—Proceedings thereon.—Whenever any such administrator ad litem shall recover any decree or other relief it shall be enforced as other decrees, except that execution which shall issue shall be in favor of the administrator ad litem for the use of the estate, and it shall direct the officer to pay the money over when collected to the county judge when the proceeding is before him, or into the registry of the circuit court when the proceeding is in that court, taking proper receipts therefor. And said funds shall be held to await the further order of the court.

2343. Decree in favor of executor.—If the executor or administrator is an adverse party, and in a proceeding in equity recover a judgment or decree against the administrator ad litem, the court may order and decree writs of possession or execution in favor of the administrator or executor or grant him such other equitable relief to which, under the facts of the case, he is entitled.

2344. Compensation of administrators ad litem.—Administrator ad litem shall be allowed such compensation for his services as the county judge or the circuit court, as the proceeding may be in one court or the other, shall allow as just and reasonable, and the same shall be taxed as costs in the case, unless the court shall think it equitable that the same be paid out of the general fund administered by him, without reference to prevailing or losing parties in the cause.

CHAPTER II.

OATH OF EXECUTORS AND ADMINISTRATORS.

Nov. 20, 1828, Sec. 8.

2345. Contents of.—Previously to the granting of letters of administration, it shall be the duty of the judge to require the person applying for administration to state, upon oath, in writing subscribed by him and filed in the office of the judge, to the best of his knowledge and belief, whether there be any heirs or legal representatives of the intestate in being or not, and whether the deceased died without will, and to swear that he will well and truly administer all the goods and chattels, rights and credits of said deceased, make a just and true inventory of the same, pay his debts as far the assets of the estate shall extend and the law direct, and make a fair distribution of the estate when thereto required.

All executors taking out letters testamentary on the estate of their testator, and all administrators with the will annexed, shall make oath before the judge that they will well and truly perform the last will and testament of the testator, and pay all his just and lawful debts, so far as his goods, chattels, rights and credits will extend, and that they will make a true and correct inventory of the same, and render a true account of their administration when thereto required.

Oath properly filed with county judge.—Emerson v. Ross, 17 Fla., 122. Evidence of date of filing.—Robinson v. Epping, 24 Fla., 237; 4 So. Rep. 812.

2346. By whom administered.—Such oaths may be administered by any officer authorized to administer an oath in this State.

CHAPTER III.

BONDS OF.

Bonds of administrators and executors. Sections.....2347-2348
Bond of executors. Section..... 2349
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Liability of sureties on. Section..... 2351
How sued on. Section..... 2352
Duty of county judge in reference to. Section..... 2353

2347. (1863.) Bond of administrator and executor: forms.—The person to whom letters of administration, with or without the will annexed, shall be granted as aforesaid, shall be required by the judge before such letters issue to execute and file in his office a bond with two or more sufficient sureties, in such penal sum as the judge may deem fit, respect being had to the value of the estate, payable to the Governor of the State and his successors in office, conditioned to faithfully perform all his duties as such administrator according to law. Administrators with the will annexed, of goods and chattels not administered, shall give bond with like security, changing the form of the condition according to the nature of the case. A bond when required of an executor shall have the same number of sureties and similar conditions to that required of an administrator.

Nov. 20, 1828, Sec. 9.

2348. Bond by surety company.—Any solvent surety or guaranty company authorized in this State to sign official bonds or bonds in judicial proceedings may become surety upon administrators', executors' and guardians' bonds, and in such cases there need be only one surety upon such bonds.

2349. Bond required of executors.—All executors and other persons holding the assets of deceased persons in trust shall, upon application of the heirs, legatees or creditors of a deceased person to the county judge of the county where the property is situated or wherein a last will is admitted to probate, and upon making it appear to the said judge that he has reasonable ground to apprehend that said executor or other such person holding the assets of such deceased persons is mismanaging, wasting or diverting, or will mismanage, waste or divert said assets from their proper administration, be required by the judge to give a bond with sufficient security, conditioned as the law directs; and this bond may be required although the will may exempt said executor from giving bond. The executor shall have ten days' notice and the right to appear and defend the proceedings.

Ch. 3003, Sec. 1, Feb. 10, 1877, revised.

2350. (1865.) New bond upon insufficiency of old bond. Whenever it shall be satisfactorily shown to the county judge by affidavits or otherwise, that the sureties on any bond given by executors or administrators are insufficient, the judge shall order that additional security be filed.

2351. (1866.) Liability of sureties on.—No surety for any executor or any administrator shall be charged beyond the assets of the testator or intestate by reason of any omission or mistake in pleading, or of false pleading of such executor or administrator.

Nov. 20, 1828, Sec. 33.

2352. (1867.) How sued on.—All bonds given by executors or administrators may, upon breach thereof, be put in suit and prosecuted from time to time at the suit of the party injured, in the name of the Governor of the State for the use of the party injured until the whole penalty in the same be recovered; and the judge shall deliver to any person, on request and payment of his legal fees, a true copy of any bond given by executors or administrators, and such copy certified by the said judge, with the seal of the court annexed, shall be sufficient evidence in any court.

Ib., Sec. 32.

2353. County judge to act of his own motion.—Whenever it shall be known to the county judge of the county where administration of any estate has been granted that causes exist as provided by law which would authorize him upon the application of others to require an executor or other person holding the assets of deceased persons in trust to give bond as provided by law, or which authorize said judge to require executors or administrators to give additional security, said judge shall of his own motion without the application of any other person make such orders, in the same manner as provided by law in other cases.

CHAPTER IV.

COMPENSATION OF EXECUTORS AND ADMINISTRATORS.

2354. (1868.) Amount of.—Executors and administrators shall be allowed all reasonable charges on account of disbursement for funeral expenses, and in the administration of the estate of the person deceased, and shall also be allowed a just and fair compensation for their services, and also a

Feb. 17, 1838, Sec. 1.

compensation not exceeding six per cent. on money arising from the sale of personal property and lands of the deceased.

Accountant allowed credit for counsel fees.—Eppinger v. Canepa, 20 Fla., 262; McHardy v. McHardy's extr., 301. And for costs of bona fide but unsuccessful suits.—Sherrell v. Sheppard, 19 Fla., 300. And for auctioneers' services and advertisements of sale.—Ib. And for tax paid though assessment defective.—Sanderson v. Sanderson, 20 Fla., 292. Accountant charged with debts negligently lost.—Ib.; Sherrell v. Sheppard, 19 Fla., 300. And with interest received from bank deposits.—Sanderson v. Sanderson, supra, 292. And with illegal fees paid to county judge.—Sherrell v. Sheppard, supra. Determination of amount of compensation.—Moore v. Felkel, supra. Is in chancellor's discretion.—Sanderson v. Sanderson, 20 Fla., 292. But annual allowance cannot be made.—Ib. Forfeiture worked by failure to perform duties.—Eppinger v. Canepa, 20 Fla., 262. None worked by unauthorized investments, unless loss ensue.—Sanderson v. Sanderson, supra. Executors' pro rata share of compensation retained by co-executor not recoverable by bill.—Bellamy v. Hawkins, 16 Fla., 733.

CHAPTER V.

RECEIPTS FOR DEBTS DUE MINORS.

2355. (1869.) Effect of.—If any executor or administrator or trustee shall receive and give discharges for debts, rents, dues, or sums of money belonging to any orphan or minor, for whom the said executor, administrator or trustee was intrusted, all such discharges and receipts shall be binding upon the orphan or minor and his heirs, when he shall come to full age, and shall be effectual in law to discharge the person taking the same. But nothing herein contained shall discharge the executor, administrator or trustee from accounting to the orphan or minor where such receipt or discharge shall not have been legally given, or was given for a fraudulent purpose. Nov. 20, 1828, Sec. 40.

CHAPTER VI.

ACTIONS AGAINST FOREIGN EXECUTORS AND ADMINISTRATORS PERSONALLY.

Sections 2356-2358

2356. How service made.—In actions against non-resident executors or administrators, if found in this State service may be made upon them, or upon their agent or attorney

personally, as in other cases, but if they cannot be found, by sending a copy of the writ, citation or process to such executor or administrator by United States mail, postage paid and duly registered, fifteen days before the return day thereof; said copy to be directed to the postoffice as recorded of said executor or administrator.

Ib., Sec. 30.

2357. (1870.) Actions suggesting devastavit.—When an action shall be brought against any executor or administrator suggesting a devastavit, if such executor or administrator cannot show that he has fully administered according to law, he shall be charged of his own estate with the amount of the debt proved to be due from the estate, if assets to that amount be proved to have come to his hands and not duly administered by him, or with so much of said debt as the amount of said assets not duly administered may be.

As to devastavits under Stat. 30 Car. Chap. 7.—Brokenbrough v. Campbell, 5 Fla., 83. Payment of legacy not devastavit, if probate of will be afterward revoked.—LeBaron v. Fountleroy, 2 Fla., 276. If administrator be heir, co-heirs have no equitable lien on his interest in lands for claim for fraudulent administration.—McClellan v. Solomon, 23 Fla., 437; 2 So. Rep. 825.

Ch. 528, Sec. 1, Dec. 23, 1852.

2358. (1871.) Action after execution against assets. Where any person shall have recovered any judgment against executors or administrators in their representative character, and upon execution issued upon said judgment it shall be returned that there are not found in the possession of said executors or administrators sufficient assets of the testator or intestate to pay and satisfy the whole or any part of such judgment, such person recovering such judgment, his executors or administrators, may upon such return of the execution as aforesaid, immediately commence and prosecute his action in the name of the Governor of the State for the use of such person, for the recovery of such judgment or such part thereof as shall remain unpaid; against such executors and administrators and their sureties, or against either of them, or the executors or administrators of either of them, upon the bond given by them for the performance of the duties of such executors and administrators; in which said action the defendants may plead any plea or pleas, and in support thereof offer any evidence which would be legally admissible in any action against executors or administrators suggesting a devastavit.

(For limitation of actions after discharge: See Section 2368.)

Sureties' liability.—Robinson v. Epping, 24 Fla., 237; 4 S. Rep. 812. Sureties of administrator c. t. a., liable for property devised in trust after payment of debts.—Woodfin v. McNealy, 9 Fla., 256. Trustee may sue on bond without order from county judge.—Ib. Action against sureties on bond cannot be

joined with action against the administrator arising from acts of intestate in fraudulently disposing of property.—Howse v. Moody, 14 Fla., 59.

Powers and liabilities of administrators.—Dean v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163; Anderson v. Northrop, 30 Fla., 162; 12 So. Rep. 318. When laches will be imputed to heirs.—Ib.

When plea of plene administravit is not admissible.—Samuels v. Wightman, 31 Fla., 10; 12 So. Rep. 526; Barnes v. Scott, 29 Fla., 285; 11 So. Rep. 48. Cannot be charged with services of laborer on the homestead.—Hedick v. Hedick, 38 Fla., 252; 21 So. Rep. 101. Co-executors one person in law, act of one is the act of all.—Sullivan's Executors v. McMillan, 26 Fla., 543; 8 So. Rep. 450. When court will not decree an accounting.—Hedick v. Hedick, 38 Fla., 252; 21 So. Rep. 101.

CHAPTER VII.

SETTLEMENT OF ACCOUNTS.

ARTICLE 1.—Voluntary settlements. Sections.....2359-2369
2.—Compulsory settlement. Sections.....2370-2372

ARTICLE 1.

VOLUNTARY SETTLEMENTS.

Annual. Sections.....2359-2367
Final discharge. Sections.....2368-2369

ANNUAL SETTLEMENTS.

2359. (1872.) Time of.—Executors and administrators may make their annual returns at any time before the first day of June in each and every year. If they fail to make such returns before such time, they shall forfeit all commissions on such returns so to be made. Ch. 1013, Secs. 2, 3, Dec. 22, 1859.

First return not required by June first, unless year has elapsed since grant of letters.—Sanderson v. Sanderson, 20 Fla., 292. Absence of file-mark immaterial if return filed in proper time.—Ib. Forfeiture extends only to commissions on collections and disbursements.—Ib. Filing annual return no bar to circuit court's chancery. Jurisdiction to administer assets.—Sanderson v. Sanderson, 17 Fla., 820. Such return filed and approved after bill in circuit court for account, etc., not prima facie evidence of payment.—Ib.

2360. (1873.) Contents of.—Executors and administrators in their annual returns shall render a full and correct account of the receipts and expenditures of all estates of which they may have control. Feb. 13, 1864, Sec. 1.

Ibid.

2361. (1874.) Approval and record of.—If such accounts shall be approved in whole or in part such approval shall be so entered upon the record, and the said accounts be filed in the office of the judge.

Judge to mark account and vouchers filed whether approved or not.—Sanderson v. Sanderson, 20 Fla., 292. Distributee putting administrator to proof of regular voucher must pay cost of proof, if voucher allowed.—Sanderson v. Sanderson, 17 Fla., 820. Judge's action conclusive, except on appeal.—Bank v. Parkhill's admr., 2 Fla., 660.

Nov. 20, 1828, Sec. 36.

2362. (1875.) Notice of settlement.—When any executor or administrator shall make a settlement of his accounts before the courts as aforesaid, he shall at least two months previously to presenting his accounts and vouchers to the court, give notice by written advertisements posted up at the outer door of the court house, and also at some public place in the county where the court is to be held before which his accounts and vouchers are to be presented, of his intention to present said accounts and vouchers. The publication of said notice, duly proven, shall be recorded by the county judge and no account or settlement shall be made or allowed by the said court unless such notice shall have been given, proven and recorded as aforesaid; and it shall be the duty of the court to make such settlement with such executor or administrator as herein directed.

After settlement, representative holds balance for distribution and not adversely.—Amos v. Campbell, 9 Fla., 187.

2363. Settlement by certain executors.—Although an executor may by the terms of the will appointing him be exempted from making settlements with returns to the county judge or other court, it shall be the duty of the county judge whenever he shall have required an executor to give bond as provided by law, upon the application of any person who procured said order requiring such bond or upon the application of any person who would be entitled to such order, or upon his, the county judge's own motion if he deem it necessary for the proper administration of said estate, to make an order directing such executor to make such settlements in and about the same as are provided by law for other executors and administrators, and any such executor failing to comply with any such orders shall be liable as other executors and administrators.

2364. Objections to account of executors and administrators.—The county judge shall hold all accounts tendered in settlement by executors and administrators for thirty days after expiration of time provided in notice under Section 2362; and any person interested as devisee, legatee, heir-at-

law or creditor may within said thirty days file objections in writing to approval of said account or any item of the same, specifying the reasons for said objections. If no such objections be filed within said time the said judge shall proceed to examine said accounts and approve or disapprove the same and the items thereof as the same may be proper or improper.

2365. Trial of objections.—If objections be filed as provided for in the preceding section, the said judge shall set a day for hearing the same, giving the parties notice thereof for at least ten days. For such trial subpoenas may be had for witnesses as in other cases, and depositions may be taken in like manner and under like circumstances as in other cases.

2366. Costs.—The cost as to each item must be paid by the party losing as to that item.

2367. Auditing, accounting, stating same, etc.—Upon reaching his conclusion upon objections to settlement or in any other manner, if any change is made in the account as presented by the administrator or executor, the judge shall audit the account, state the same and enter an order allowing it as stated, and record the statement and the order.

FINAL SETTLEMENT AND DISCHARGE.

2368. (1876.) Method of obtaining and effect of.—If an executor or administrator shall be desirous of making final returns of his accounts and obtaining a discharge from his executorship or administratorship, he may make and receive same upon application to the county judge. However, before such settlement shall be made and discharge granted, it must appear that six months' notice of such intended application has been given, published once each month in a newspaper in the county where the letters were granted; and that the said applicant has faithfully and honorably discharged the trust and confidence reposed in him; and the said discharge so obtained shall be taken to operate as a release from the duties of executor or administrator, and shall furthermore operate as a bar to any suit against the person so having acted as executor or administrator, unless the same be commenced within five years from the date of said discharge, saving to all persons non compos mentis, infants, persons imprisoned or beyond the seas, who may have had any interest in the said estate, two years from the time of the removal of any disabilities herein enumerated. Feb. 15, 1834, Sec. 5.

If the estate be a limited estate, described in Section

Ch. 1878, Sec. 8, Feb. 17, 1872; Ch. 3434, Sec. 2, March 5, 1883.

2399, the notice provided for may be, as the judge may direct, by publication as aforesaid, or by posting notice thereof at the door of the court house and at three or more public places in the county, six months before the day appointed for the discharge.

Judge's duty before granting discharge.—Gadsden v. Jones, 1 Fla., 332. Executor having power of sale to execute trust, must not be discharged before execution of power.—Lott v. Meacham, 4 Fla., 144. Discharge a bar to all suits except for personal liability.—Gadsden v. Jones, 1 Fla., 332. Presumption in favor of faithful execution of duty.—Ib. No final discharge can be granted until notice has been duly published in newspaper.—Anderson v. Northrop, 30 Fla., 612; 12 So. Rep. 318.

2369. (1877.) When circuit judge to act.—In all cases where the county judge shall be the executor or administrator it shall be the duty of the judge of the circuit court to perform the duties hereinbefore required of the said county judge as to settlements and discharges.

ARTICLE 2.

COMPULSORY SETTLEMENT.

2370. (1878.) Of executors and administrators.—On the petition of any legatee, heir or surety, whether any mismanagement or waste be charged or not, the county judge may order either executors or administrators to file a just and true account of their administration in the office of the judge within such time as the judge may direct from the issuing and service of such order.

For chancery proceedings by creditors, see Eppinger v. Canepa, 20 Fla., 262. Distributee allowed only simple interest on reasonable delay to call to account.—Amos v. Campbell, 9 Fla., 187.

Nov. 20, 1828, Sec. 37.

2371. (1879.) Of all persons entrusted with minors' interest.—The county judge shall have power to award process to cause to come before him all and every such person who as executor or administrator, tutor, trustee or otherwise are or may be concerned and entrusted or in any wise accountable for any estate, real or personal, belonging to any orphan or any person under age, to cause them to make within a reasonable time true and perfect inventories of said estate and render just and true accounts of the same.

2372. (1880.) Enforcement of order to account.—If any person directed shall neglect to account to said court, the

court shall immediately issue an attachment against such person, to be executed by the sheriff of the county where such person may live, which sheriff shall, together with his return, produce the delinquent, who shall pay all the costs of the attachment; and said person shall stand committed for contempt until he makes such account.

CHAPTER VIII.

REMOVAL OF EXECUTORS AND ADMINISTRATORS.

ARTICLE 1.—Causes of removal. Section..... 2373
2.—Proceedings for removal. Sections.....2374-2375
3.—Completion of administration. Section..... 2376
4.—Surrender of assets to successor. Sections.....2377-2378
5.—Enforcements of obligations. Sections.....2379-2381

ARTICLE 1.

CAUSES OF REMOVAL.

2373. (1881.) Removal of.—Any administrator or executor may be removed and his letters revoked for any of the following causes, and such removal shall be in addition to, and not in lieu of any other penalties prescribed by law in cases enumerated: Ch. 1733, Sec. 1, Feb. 19, 1870.

1. Habitual drunkenness or continued sickness, rendering him incapable of the discharge of his duties, or insanity.

2. Failure to make and return inventories or to render just and true accounts of the estate, or to make settlements and returns when so required by law.

3. Failure to return schedules of property sold, or accounts of sales of property, real and personal, when so required by law.

4. The wasting or embezzlement or other mal-administration of the estate.

5. Failure to give bond or security for any purpose, when so required by the court, in accordance with the requirements of law.

ARTICLE 2.

PROCEEDINGS FOR REMOVAL.

2374. (1882.) Who may institute proceedings.—The proceedings may be instituted by any creditor, legatee, de- Ib., Sec. 2.

visee, heir, distributee, or by any co-executor or co-administrator, or the sureties, or either of them, upon the administration bond, and shall be conducted in such manner as is prescribed by law for proceedings in probate matters before the county judge.

Ib., Sec. 2.

2375. (1883.) In what court proceedings to be.—Applications for removal must be made to the court from which letters testamentary or of administration issued.

As to collateral attack upon order removing administrator.—Mathews v. Durkee, 34 Fla., 559; 16 So. Rep. 411.

ARTICLE 3.

COMPLETION OF ADMINISTRATION.

Ib., Sec. 3.

2376. (1884.) Provision for.—When an executor or administrator is removed for any cause, and there is any other executor or administrator, no other executor or administrator shall be appointed; but such remaining executor or administrator shall complete the administration of the estate. If the executor or administrator so removed be a sole executor or administrator, the county judge shall appoint an administrator "cum testamento annexo, de bonis non," or an administrator "de bonis non," as the case may require, in which event a bond shall be required as in case of an original administration, the form of the condition of the bond being modified to suit the nature of the case.

Administrator de bonis non administers upon estate unadministered by his predecessor.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163.

ARTICLE 4.

SURRENDER OF ASSETS TO SUCCESSOR.

Ib., Sec. 5.

2377. (1885.) Demand of assets by successor.—The remaining executor or administrator, with the will annexed, of the goods not administered, or the administrator of the goods not administered, shall demand and receive of the removed executor or administrator, his heirs, executors or administrators, all the goods and effects of the deceased, and all books of account, bonds, notes or other securities, docu-

ments, papers or property that concern the estate, together with all the sums of money due the estate by him.

2378. (1886.) Account, and surrender of assets.—A removed executor or administrator shall be held to file a true, perfect and final account of his administration with the county judge within twenty days after his removal, and he shall turn over to his successor all the goods and effects of the deceased, and all property, and all books of accounts, bonds, notes or other securities, documents or papers that are in his control or possession and which concern the estate, together with all the sums of money due the estate by him, upon the qualification of his successor and upon demand made by him. Ib., Sec. 6.

ARTICLE 5.

PROCEEDINGS TO ENFORCE OBLIGATIONS.

2379. (1887.) Proceedings for commitment.—If a removed executor or administrator shall fail or refuse to file a true, perfect and final account of his administration as required, or shall fail to turn over to his successor all the goods, property and effects of the deceased, and all books of accounts, bonds, notes or other securities or documents and papers that are in his control and which concern the estate, upon the demand aforesaid, or shall fail to pay over to such new administrator, or remaining executor or administrator, all the sums of money due the estate by him, it shall be the duty of the county judge in either event to issue an order addressed to such executor or administrator directing a compliance with the law in the respects mentioned, or either of them, as the case may be, within ten days after service of a copy of the order; and in case of a failure or neglect of the removed executor or administrator to comply with this order within the time required, it shall be within the discretion and power of the judge, and it shall be his duty when such default is not attributable to a cause which is justifiable, to commit such removed executor or administrator until he complies fully with the requirements of the law in the respects indicated. If sufficient cause is shown for the default, the judge shall then indicate a reasonable time in which a compliance with the law shall be required; and upon failure to comply with this or any subsequent like order, the judge may commit the party in default until he does comply. Ib., Secs. 7 and 8.

In case of a commitment, the judge of the circuit court

may, upon a writ of habeas corpus, inquire whether sufficient cause or excuse for the non-compliance with the orders of the county judge were shown by the defaulting executor or administrator.

Ib. Sec. 9.

2380. (1888.) Proceedings to be instituted, by whom.—Proceedings for the commitment of such defaulting executor or administrator may be instituted by the county judge, sua sponte, or by any creditor, legatee, devisee, heir or distributee, or by the sureties or either of them, or in case of a sole executor or administrator, by his successor, in addition to the other parties, and in cases where there is more than one executor or administrator as well as the parties before mentioned.

Ib., Sec. 10.

2381. (1889.) Proceedings on bond.—In all cases where an administrator or executor is removed, or he is in default for two months, either in the delivery of any portion of the estate, or in the payment of the balances due to the new administrator or executor, or the remaining administrator or executor, the administration or testamentary bond of such removed administrator or executor shall be put into suit. In all cases where there is no bond, the new administrator or executor, or the remaining administrator or executor, shall institute an action for the recovery of the money due, or the value of the property retained, or both, as the case may be. In either of the cases stated in this section, an attachment may issue against the property of the removed administrator or executor upon the affidavit of the new or remaining administrator or executor, his agent or attorney, that he is a removed executor or administrator, and is in default for two months in delivering any portion of the estate, specifying what portion and its value, or that he is in default for two months in the payment of the balance due, specifying the amount. When this attachment is issued, bond shall be given as in other cases of attachment.

Section does not extend to devastavits of deceased executor or administrator not removed.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163.

CHAPTER IX.

TEMPORARY AND LIMITED ADMINISTRATION.

ARTICLE 1.—Curators. Section..... 2382
2.—Administrators and curators durante minoritate, etc. Section 2383
3.—Sheriffs as administrators. Sections.....2384-2389

ARTICLE 1.

CURATORS.

2382. (1890.) Appointment, powers and duties of.—When any person shall die intestate the county judge, whenever it is necessary, and upon the application of any person, shall appoint a curator to take charge of the estate of such deceased person until letters of administration are granted. If, however, the person entitled to take out letters of administration is a resident of the county where the property is situated, no such curator shall be appionted until after such notice as the court may direct to such person so entitled to letters of administration. If the person entitled to such letters, shall, after this notice, fail to take out such letters, a curator shall be appointed. Upon this appointment the court shall direct the person in possession of the effects of the deceased forthwith to deliver them into the possession of the curator, and this order, when not obeyed promptly, may be enforced by attachment and imprisonment for the contempt. If it shall be made to appear to said judge upon oath that there is great danger that said property or any portion of the same is likely to be wasted, destroyed or removed beyond the jurisdiction of the said judge if the appointment of a curator is delayed by giving the notice herein provided, then it shall be lawful for such judge to appoint a curator without first giving such notice. Ch. 1734, Sec. 1, Feb. 16, 1870.

Such bond shall be required of the curator as the court shall deem necessary to secure the property, or proceeds in case of sale, and the court may make an order for the sale of such portion of the perishable property as should be sold.

The curator shall file immediately an inventory of the property. A delivery of the effects and proceeds of sale by the curator to the administrator, when one qualifies, may be enforced by attachment and imprisonment.

ARTICLE 2.

ADMINISTRATORS AND CURATORS DURANTE MINORITATE, ETC.

2383. (1891.) Appointment and duties of.—While any controversy is pending in regard to a will, or during the minority or in the absence of the executor, the county judge may grant letters of administration, during such contro- Nov. 20, 1828, Sec. 10.

versy, minority or absence, or may appoint a curator to collect and preserve the estate of the deceased, and sell any part of the same which may be of perishable nature, until a probbate of the will or letters of administration be granted. Such temporary administrator or curator shall give bond with condition and sureties to be approved by the judge, for administering the estate of such testator well and truly during the controversy, minority or absence of the executor, or as the case may be, for collecting the estate and making an inventory thereof, and safe keeping and delivery of the same when thereunto lawfully required by the executor or administrator duly qualified.

(For administrators ad litem: See Section 2341, et seq.)

ARTICLE 3.

SHERIFFS AS ADMINISTRATORS.

Ib., Sec. 63; Nov. 21, 1829, Sec. 4; Ch. 157, Sec. 3, Jan. 7, 1848; Ch. 3902, Sec. 2, June 1, 1889.

2384. (1892.) When appointed.—When any person shall die leaving property in this State, and for the space of thirty days thereafter no person shall be appointed administrator on the estate of such deceased person, the sheriff of the county, ex-officio, shall, upon the order of the county judge, take charge of such estate and administer on and settle the same in the manner directed for other administrators; and in the case of the death of any administrator, or of the revocation of the letters of administration, the county judge shall grant new letters of administration to any person entitled to the same; and in case no person shall be appointed administrator of such estate, the sheriff of the county ex-officio, shall proceed to administer on and settle such estate under order of the aforesaid judge.

The liability of such sheriff as administrator shall begin on the making of such order.

Until order made sheriff not ex-officio administrator.—Wilson v. Dibble, 16 Fla., 782; Davis v. Shuler, 14 Fla., 438. Nor can he bind estate.—Ib. Nor can process be served upon him with effect.—Wilson v. Dibble, 16 Fla., 782.

Nov. 21, 1829, Sec. 5.

2385. (1893.) Liability on his sheriff's bond.—In all cases where the sheriff shall be required or empowered to act as curator or administrator, the sureties on his sheriff's bond shall be liable for his administration as administrator or curator.

Sureties liable only after order made.—Territory v. Redding, 1 Fla., 243.

2386. (1894.) Settlements of.—

1. As Other Administrators.—All sheriffs who become ex-officio administrators of estates shall be liable to make settlement as other administrators and in the same manner and subject to same liabilities. Ch. 3003, Secs. 1, 2, Feb. 10, 1877.

2. Upon Expiration of His Term as Sheriff.—When the administration of the estate of a deceased person has been or may hereafter be committed to any ex-officio administrator, he shall, upon going out of the office of sheriff, make a settlement within three months thereafter of all his acts and doings as such ex-officio administrator of said estate before the county judge, and the balance due by him shall be ascertained, and the said county judge shall then, by his order, commit all assets remaining to be administered to the sheriff of said county, and take and file a complete inventory of the same.

2387. (1895.) Next of kin, or creditor preferred.—If, however, the next of kin or largest creditor of said estate apply for letters of administration "de bonis non," they shall be preferred. Ibid.

2388. (1896.) Proceedings to compel settlement.—Any person who has been such sheriff and ex-officio administrator, and who fails to make such settlement within the time herein provided, shall be at once notified to make such settlement by the county judge, who shall have full power to issue such process and impose such punishment by fine or imprisonment as are necessary to compel said settlement and compliance with his orders therein touching said administration.

2389. (1897.) Powers of county judge over.—The county judge shall have the same jurisdiction and power over sheriffs as administrators touching the estates committed to their administration, as he has over other administrators. Ib., Sec. 4.

TITLE III.

ADMINISTRATION OF ESTATES.

CHAPTER 1.—When unnecessary. Section..... 2390
2.—Where letters and probate to be granted. Sections..2391-2392
3.—Appraisement and inventory. Sections.....2393-2397
4.—Payment of debts, legacies, etc. Section.....2398-2406
5.—Action by and against estates. Sections.....2407-2411
6.—Sales of property of estate. Sections.....2412-2431
7.—Contribution among legatees, etc. Section..... 2432
8.—Investment of money of minors. Section..... 2433
9.—Distribution after payment of debts and legacies. Section 2434
10.—Insolvent estates. Sections.....2435-2447

CHAPTER I.

WHEN ADMINISTRATION UNNECESSARY.

Ch. 3434, Sec. 1, March 5, 1883.

2390. (1898.) Circumstances when.—No administration shall be necessary upon any estate where there is a sole heir and the estate is not indebted; or where the estate is not indebted, and there are several heirs who make division of the property amicably among themselves, or where there is no property except the exempt homestead and exempt personal property.

CHAPTER II.

WHERE LETTERS OF ADMINISTRATION AND PROBATE OF WILLS TO BE GRANTED.

Sections 2391-2392

The probate of all wills and letters of administration shall be granted—

Sec. 1899, Ib.

2391. (1899.) If decedent die in this State.—

Nov. 20, 1828, Sec. 6.

1. In the county in which he had a residence, house or other place of abode.

2. If he had none such, then in the county wherein he died.

2392. (1900.) If he died out of this State.—

1. If possessed at the time of his death of any goods, chattels or lands in this State, then in the county where any part of such goods, chattels or lands may be. Nov. 21, 1829, Sec. 1.

What "goods" include.—Robinson v. Epping, 24 Fla., 237; 4 So. Rep. 812; Epping v. Robinson, 21 Fla., 36. Sufficient to sustain county judge's jurisdiction, if adjudication of assets appear at any stage of his proceedings.—Robinson v. Epping, supra.

2. If possessed of no such property in this State, but with debts due him by any person living in this State, letters testamentary or of administration may be granted for the collection of such debts, in the county where any debtor may reside, to any person who shall produce authority from the representatives of the decedent.

Clause does not exclude power to grant letters generally in cases provided by law.—Epping v. Robinson, 21 Fla., 36.

Jurisdiction of county judge exclusive and general over matters in Sections. His proceedings not open to collateral attack by proof aliunde the record.—Ib. Exceptions.—Ib. As to jurisdictional facts, and allegations and proof of want of jurisdiction.—Robinson v. Epping, 24 Fla., 237; 4 So. Rep. 812; Epping v. Robinson, 21 Fla., 36.

CHAPTER III

APPRAISEMENT AND INVENTORY.

Sections 2393-2397

2393. (1901.) Appointment and qualification of appraisers.—The judge on granting letters testamentary or of administration shall appoint two or more respectable and discreet persons not of kin to the deceased, as appraisers of the goods and chattels, rights and credits of the testator or intestate, and shall administer to the said appraisers an oath truly and justly to view and appraise, according to the best of their skill and opinion, all the estate of the testator or intestate which to them shall be produced or which shall come to their knowledge, and deposit the appraisement thereof in the office of the county judge. Nov. 2, 1828, Sec. 13.

2394. (1902.) Duties of appraisers.—On the appointment of the appraisers aforesaid they shall proceed to appraise all the personal property to them produced, and the appraisement thereupon made, if signed by the executor or administrator, may be considered as an inventory of such part of the estate as had come to his hands or possession. Ib., Sec. 14.

Feb. 15, 1834, Sec. 4; March 4, 1839, Sec. 2.

2395. (1903.) Record of inventories.—All inventories (and accounts required to be filed in the office of the county judge) shall be recorded in a book to be kept exclusively for that purpose.

Nov. 20, 1828, Sec. 18.

2396. (1904.) Inventories as evidence.—Inventories and appraisements may be given in evidence in any suit by and against the executors or administrators, but shall not be conclusive for or against them that the estate was really worth, or was bona fide sold for more or less than the appraised amount.

Ib., Sec. 17.

2397. (1905.) Compensation of appraisers.—Each appraiser shall be entitled to receive one dollar per day for attendance and services, to be paid out of the estate of the deceased.

Property turned over to State by mistake, not lost to the estate.—Adams v. Board of Trustees, etc., 37 Fla., 266; 20 So. Rep. 266.

CHAPTER IV.

PAYMENT OF DEBTS, LEGACIES, ETC.

ARTICLE 1.—Notice to creditors and others. Sections.....2398-2399
2.—Time of compulsory payment. Sections.....2400-2402
3.—Order of payment of debts. Section..... 2404
4.—Effect of non-claim. Sections.....2405-2406

ARTICLE 1.

NOTICE TO CREDITORS AND OTHERS.

Ib., Secs. 28 and 3.

2398. (1906.) By executors and administrators.—Executors and administrators on taking out letters testamentary or letters of administration, shall cause an advertisement to be published once a week for the space of eight weeks in some newspaper printed in the county wherein said letters testamentary or of administration shall have been granted, calling upon creditors, legatees, distributees and all persons having claims or demands against the estate to present them within two years. Upon the expiration of said advertisement proof of the publication thereof as aforesaid shall be filed with the county judge and recorded by him.

Sufficient if notice calls for presentation "within the time prescribed by law."—May v. Vann, 15 Fla., 553. No particular form necessary. Notice must amount to a warning.—Amos v. Campbell, 9 Fla., 187.

Suggesting death and making executor defendant equivalent to presenting claim.—Anderson v. Agnew, 39 Fla., 30. Presentation to one sufficient where there is more than one executor.—Barnes v. Scott, 29 Fla., 285; 11 So. Rep. 48. Presumptions as to publication of notice.—Bush v. Adams, 25 Fla., 809; 6 So. Rep. 860. Individual judgment cannot be rendered in an action against an executor.—Philips v. Sanchez, 35 Fla., 187; 17 So. Rep. 363.

2399. (1907.) Notice in case of small estates.—

1. Of Value of Two Thousand Dollars.—When the value of an estate, exclusive of homestead exemption and exemption in favor of the widow and family of the deceased, shall not exceed two thousand dollars, such advertisement shall be published as aforesaid by notices posted at the door of the court house, and at three or more public places in the county to be designated by the county judge, and shall require presentation of claims and demands within one year. Ch. 1879, Secs. 1, 2, Feb. 17, 1872.

2. In case any person in this State shall die leaving an estate of a value less than five hundred dollars, it shall not be necessary to publish in a newspaper any notice required to be published to administer upon or settle said estate, sell the lands thereof, or be discharged from the administration thereof, but every such notice may be published by posting the same in three public places in the county, one of which places shall be at the court house door. Ch. 3434, Sec. 2, Mch. 5, 1883.

ARTICLE 2.

TIME OF COMPULSORY PAYMENT.

2400. (1908.) Debts and legacies.—

1. Debts.—No exectuor or administrator shall be compelled to pay the debts of the testator or intestate until after the expiration of six months from the taking out of letters testamentary or letters of administration; and if any person shall bring any action against any executor or administrator within the aforesaid six months the plaintiff, although he may obtain judgment for the amount of his demand, shall not recover any costs in his suit, nor have execution on his judgment until after the expiration of the said six months; nor shall any execution issue on any judgment rendered against the deceased in his lifetime without being revived by scire facias, nor until after the expiration of the six months aforesaid. March 20, 1828, Sec. 26.

Surety for decedent's debt has provable claim, if debt be due.—Walker v. Drew, 20 Fla., 908. As to debts incurred by executor carrying on busi-

ness.—Fridenberg v. Wilson, 20 Fla., 359. Administrator's recognition of a debt gives it no additional validity.—May v. May, 7 Fla., 207.

Ib., Sec. 88.

2. Legacies and Distributions.—No legacy or distribution shall be required of any executor or administrator until the expiration of six months from the taking out of letters testamentary or letters of administration, nor shall executors or administrators be compelled to pay legacies or make distribution until bond and security be given by the person entitled to the same to refund a due proportion of any debts or demands which may afterwards appear against the estate and all costs which may be awarded on the same, if such debt or demand shall be presented within two years after granting the letters testamentary or of administration.

Distributee cannot maintain action at law for distributive share.—Amos v. Campbell, 9 Fla., 187. Bill must allege surplus after debts paid.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163. No garnishment of legacy, during administration.—Post v. Love, 19 Fla., 634. Refunding bond should be conditioned precedent to payment.—Sanderson v. Sanderson, 17 Fla., 820. Administrator's interpleader to determine ownership of funds in his hands.—Sanderson v. Sanderson, 20 Fla., 292.

2401. Proceedings for payment of legacies.—Petition.—Before any executor or administrator cum testamento annexo shall be compelled to pay, before final settlement of his accounts, any legacy in money or deliver specific personal property devised to any person, unless such personal property be of the exempt personal property of the testator which may have come to the hands of such executor or administrator, the said legatee shall file before the county judge a petition setting forth the facts which entitle him to the relief prayed, i. e., the legacy sought is proceeds of or a part of the personal property exemption of the testator, or that the estate is fully solvent and able to pay all debts thereof after payment of the legacy sought and other legacies entitled to equality of payment, if any there be.

2402. Further proceedings.—A copy of said petition, and with the same a citation by the county judge to such executor or administrator cum testamento annexo to appear at such day as will admit fifteen days' service, shall be served upon such executor or administrator as provided by law in other cases.

2403. Final.—Upon the return day of the citation, or upon such other day as may be fixed by the court, it shall proceed to hear and determine the matter, and either party shall have subpoenas for witnesses and a right to offer testimony by deposition or otherwise, as in other cases. The losing party shall pay all costs of the proceedings.

ARTICLE 3.

ORDER OF PAYMENTS OF DEBTS.

2404. (1909.) Debts graded.—Executors and administrators shall pay the debts of the deceased in the following order: Ib., Sec. 29; Feb. 12, 1832, Sec. 1.

1. The necessary funeral expenses.

2. Debts due for board and lodging during the last sickness of the deceased.

3. Physician's and surgeon's bills for medicine and attendance, and debts incurred in favor of other persons for nursing, attendance and medicine during the last sickness of the deceased.

4. Judgment of record rendered and docketed in this State during the life time of the deceased, and all debts due to the State, including taxes, and also any taxes due any city or town.

5. Mortgages, mechanics', material men's, laborers', employees' and other liens where the value of the property in the hands of the executor or administrator incumbered by such liens exceeds the amount thereof.

6. Finally, all other debts, whether by specialty or otherwise, without distinction of rank.

ARTICLE 4.

EFFECT OF NON-CLAIM.

2405. (1910.) Upon claims generally.—All debts and demands of whatsoever nature against the estate of any testator or intestate which shall not be presented to the executor or administrator within the said two years after the first publication of the notice provided for by Section 2398, shall forever afterward be barred; saving, however, to infants, persons of unsound mind, imprisoned, or beyond the limits of the United States, in the military and naval service thereof during the war, the same term of two years after their respective disabilities shall be removed. This section shall not apply to legatees, distributees or heirs-at-law. Nov. 20, 1828, Sec. 39.

Object of section stated.—Amos v. Campbell, 9 Fla., 187. To sustain a bar section must be strictly pursued.—Cotton v. Blocker, 6 Fla., 1; Filyau v. Laverty, 3 Fla., 72. Obligation in chancery as well as at law.—Ib. Pre-

sentation need be in no particular form.—But must be equivalent to actual presentation.—Ib. Bringing suit is sufficient.—Ib. So is sci. fa. to make administrator party.—Ellison v. Allen, 8 Fla., 206. But not a foreclosure suit pending at decedent's death, unless revived within two years.—Bush v. Adam, 22 Fla., 177. A mortgage is within the section.—Ib. Also debts not due.—Filyau v. Laverty, 3 Fla., 72. Suit by surety against heirs of the deceased co-surety not within section.—Gibson v. Mitchell, 16 Fla., 519. Relation of co-sureties not a claim within section.—May v. Vann, 15 Fla., 553. Presentation to one executor sufficient, and unnecessary to one qualified many years after.—McHardy v. McHardy's extr., 7 Fla., 301. To discharged administrator no effect.—Gibson v. Mitchell, 16 Fla., 519. Administrator, being creditor of solvent estate, need not present or file his claim.—Sanderson v. Sanderson, 17 Fla., 820.

Ch. 1879, Sec. 2, Feb. 17, 1872.

2406. (1911.) Upon claims against small estates.—All such debts and demands against estates of a value less than two thousand dollars as provided in Section 2399, which shall not be exhibited within one year after the first publication of the notice provided for in Section 2399, shall be barred.

CHAPTER V.

ACTIONS BY AND AGAINST ESTATES.

Nov. 21, 1829, Sec. 3.

2407. (1912.) Actions by foreign executors and administrators.—Executors and administrators who shall produce probate of wills or letters of administration duly obtained in any of the States or Territories in the United States, and properly auhenticated under the act of Congress of the 26th of May, A. D. 1790, shall be authorized to maintain action in the several courts in this State under the same rules and regulations as other plaintiffs.

Rights to grant letters here not excluded.—Epping v. Robinson, 21 Fla., 36. Whether foreign probate or letters were duly obtained must be settled before trial if defendant wish to take advantage.—Sullivan v. Honacker, 6 Fla., 372. Foreign representative cannot defend suit even by consent.—Sloan v. Sloan, 21 Fla., 589. May maintain suit.—Margarum v. Christee, etc. Co., 37 Fla., 165; 19 So. Rep. 637.

Nov. 10, 1828, Sec. 12.

2408. (1913.) Limitations of actions against estates.—If any suit be brought against any executor or administrator, or other person having charge of the estate of a testator or of an intestate, for the recovery of a debt due upon an open account the court before whom such suit shall be brought shall cause to be expunged from such account every item thereof which shall, upon the showing of the defendant or otherwise, appear to have been due five years before the death of the testator or intestate, saving all persons non com-

bos mentis, femes covert, infants, imprisoned, or out of this State, who may be plaintiffs in such suits, three years after their several disabilities shall be removed; and if any person shall wilfully post-date any such account he shall forfeit and pay to the representative of the estate, for the use of the estate, ten-fold of the amount of the articles so post-dated.

2409. (1914.) Survivor of action upon removal of executor or administrator.—All suits at law or in equity pending before any courts in favor of or against an executor or administrator removed, shall survive to, and may be prosecuted by or against the administrator appointed to succeed him, and such shall likewise be the case where there is a remaining executor or administrator; but neither the administrator with the will annexed of the goods not administered, nor the remaining executor or administrator, shall be liable for any default of their predecessor in any other manner than they would in the absence of this law, nor shall they be liable in any event, in any amount beyond the value of the property or assets which have or may come into their hands. Ch. 1733, Sec. 5, Feb. 19, 1870.

2410. Power to issue execution.—In all cases where the county judge is authorized to enter orders or judgments he shall have authority to issue executions, writs of possession, or such other writs as are necessary and proper to enforce orders and judgments.

2411. No executor de son tort.—No person shall be liable as executor de son tort to recover from him a debt by a deceased person, but any person taking, converting or intermeddling with the property of a deceased person shall be liable to the executor, administrator or curator when appointed for the value of all the property so taken or converted, and for all damages to the estate of the deceased caused by his wrongful action; but this section shall not be construed so as to prevent a creditor of a deceased person from suing one in possession of property fraudulently conveyed by such deceased person, for the purpose of setting aside such fraudulent conveyance.

CHAPTER VI.

SALES OF PROPERTY OF ESTATES.

ARTICLE 1.—Personal. Sections.....2412-2413
2.—Real. Sections.....2414-2431

ARTICLE 1.

SALE OF PERSONAL PROPERTY.

Nov. 20, 1828, Sec. 19.

2412. (1915.) Perishable.—Executors or administrators, whether it be necessary for the payment of debts or not, shall, as soon as convenient after they shall be qualified, sell at public sale, after ten days' advertisement, all such goods of their testator or intestate, specific legacies excepted, as are liable to perish, be consumed or rendered worse by keeping, giving such credit as they shall judge best and the circumsances of the estate will admit of, taking bonds or promissory notes with good security, of the purchasers, and shall account for such goods according to the sales; if more be sold than will pay the debts and expenses, the executors and administrators may assign said bonds and notes for the surplus to those entitled to the estate, and be discharged for so much.

On credit extended administrator must take promissory note or bond with good security.—Sherrell v. Sheppard, 19 Fla., 300. County judge has no power to approve the security.—Ib. Liability of administrator.—Ib. Such notes not treated as investments.—Ib.

Ch. 3714, Secs. 1, 2, 3, June 7, 1887.

2. Sale of Debts Due the Estate.—Whenever an executor or administrator shall have claims in favor of an estate which he cannot collect by suit, he may petition either the circuit or county court for an order authorizing a sale at public outcry of such paper, and the court or judge may require evidence that the claims are not collectible by suit, and if they be found not collectible by suit the judge may authorize a sale of such paper for cash only, and the said sale shall be made in like manner as other public sales are made and the usual notice given as in sales under executions.

Upon accounting with the estate, the administrator or executor shall have credit for the full value of the paper so sold. All sales in accordance with this law heretofore made where the executor or administrator has duly accounted for the proceeds, are valid.

Nov. 20, 1828, Sec. 20.

3. To Pay Debts and Legacies.—If such perishable goods be not sufficient for the payment of debts and expenses, the executors or administrators shall proceed to sell the other personal estate until the debts and legacies be all paid, having regard to the specific legacies.

If, however, any testator direct that his estate shall not be appraised or sold, the same shall be preserved in specie and an inventory only made thereof and deposited, unless a sale be necessary for the payment of debts.

Sales of personalty to be at public auction.—May v. May, 7 Fla., 207.

2413. (1916.) Account sale to be filed.—Executors and administrators shall file with the county judge within sixty days after the sale a complete schedule of the property sold as above, signed by the said executors or administrators, or such of them as shall have made the sale, which said schedule shall contain a description of the articles, of the names of the purchasers and the amounts. Ib., Sec. 21.

ARTICLE 2.

SALES OF REAL ESTATE.

Real estate to be liable for debts. Section..... 2414
Sales under executions. Section..... 2415
Sales under wills. Section..... 2416
Sales under orders of court. Sections.....2417-2430
Sales in pursuance of decedents contracts. Section..... 2431

2414. (1917.) Real estate liable for debts.—

1. Real estate shall be liable for the debts of a decedent but shall descend to the heir or devisee and remain in his possession until the executor or administrator shall take possession of the same under the order of the court for the payment of debts, or until the same shall be sold under execution by any creditor of the decedent. An order that the administrator or executor shall take possession of said real estate shall be made whenever the administrator or executor or any creditor of said decedent shall file in said court a petition showing that the facts exist necessary to obtain an order for the sale of the real estate of said decedent to pay debts under this section, and otherwise conform, as near as may be, to the proceedings provided herein.

2. Said petition shall, in addition to the facts above provided, state the names of all persons in possession of such real estate, or any part of the same, and claiming title to the same, or any part thereof or any interest whatever therein, and of all heirs-at-law or other persons claiming same or any interest therein so far as they may be known to petitioner, and the respective places of residence and postoffice addresses of each of them. Not less than thirty days' notice shall be given by citation directed to each of said heirs named and all other persons interested in the said real estate, setting forth in brief form the object of the petition, describing the land sought to be taken possession of by the administrator or executor, and commanding all the persons named and

all other persons interested to appear at a day named, not less than forty days from the date of such citation and to show cause, if any they have, why said petition should not be granted. The citation shall be served in the same manner as subpoenas in chancery upon all persons named in the petition and citation and residing within the jurisdiction of the court, and shall be published four successive weeks preceding the date named therein to show cause, in some weekly newspaper, if there be one published in said county, and if there be no such newspaper then by posting at the court-house door of said county for said space of time. A copy shall be mailed also to each person named in the petition and citation where they reside beyond the jurisdiction of the court and their postoffice addresses are stated in the petition or otherwise made known to the court. Upon compliance with these provisions, and the prayer being contained in said petition that the administrator or executor take possession of the lands described as assets of said decedent, and no good reason being shown to the contrary, the court may make, in addition to the order provided for in the first paragraph of this section, an order that the administrator or executor take possession of the real estate described in the petition and citation as assets of the estate of said decedent, and that all persons in possession thereof, or any part of the same, holding under said decedent, surrender the possession of same to such administrator or executor. After such order shall have been made the administrator or executor of such decedent shall be the only necessary party in any court or to any proceeding affecting the title or right of possession of said decedent in said real estate, or to subject the same to the payment of any debt of the decedent, or to enforce any lien thereon made by said decedent. The citations above provided for and proof of publication and service of same and all orders herein provided for shall be duly recorded by the court. Any party interested shall have the right to deny the allegations of the petition provided for in the preceding sections, and the issue so made shall be tried by the county judge in the same manner and form as near as may be as other probate matters are tried by him and with the same directions as to costs and otherwise. Guardians ad litem may, if necessary, be appointed by said judge to represent any infant interested in the matter, and said judge under the facts and law of the case shall determine whether said real estate or any portion of the same shall be taken into possession of the administrator or executor as assets of the said estate for the payment of debts.

Suit for recovering decedent's land must be by heirs or devisees.—Rose v. Withers 39 Fla., 460; 22 So. Rep. 724. When executor in possession

chargeable for rent valid.—Eppinger v. Canepa, 20 Fla., 262. Heir's deed passes valid title subject to creditors' claims.—Stewart v. Mathews, 19 Fla., 752. Administrator not entitled to possession of homestead.—Barco v. Fennell, 24 Fla., 378; 5 So. Rep. 9. Debt cannot be maintained against heir on ancestor's bond, though expressly named.—Gilchrist v. Filyau, 2 Fla., 904. Suit by surety against co-sureties heirs maintained to extent of property descended.—Gibson v. Mitchell 16 Fla., 519. Execution must show whether satisfaction is to be made out of decedent's estate, or out of administrator's property.—Higgins v. Driggs, 21 Fla., 103.

2415. (1918.) Execution sales.—Real estate of a decedent shall be equally liable with personal property to levy and sale under an execution upon any judgment against the administrator or executor, or against the decedent; but the executor or administrator may in every case designate the property which shall first be taken in execution, and determine whether it shall be real or personal. The officer levying shall, however, judge of the sufficiency, and shall take sufficient property, if it be found, to satisfy the execution. Ch. 1732, Sec. 2, Feb. 16, 1870.

2416. (1919.) Sales in pursuance of wills.—The sale and conveyance of lands and tenements sold in pursuance of any will shall be made by the executors, or such of them as shall undertake the execution of the same, or by the surviving executors, or by the administrator with the will annexed, if no other person shall be appointed in such will for the purpose, or if the person so appointed shall refuse to perform the trust, or die before he shall have completed the same, or is otherwise rendered incompetent. Ib., Sec. 3.

Power to sell estate does not include power to borrow money.—Fridenberg v. Wilson, 20 Fla., 359.

SALES UNDER ORDERS OF COURT.

Sales under defective wills. Section	2417
Sales to pay debts. Section	2418
Of estates of less value than $300. Section	2419
Sales of lands in different counties. Section	2420
Sales of real estate of infants. Section	2421
Directions in orders of sale. Section	2422
Proceedings after order of sale. Sections	2423-2431

2417. (1920.) Sales under defective wills.—If a will does not authorize a private sale or give such powers as authorize a sale without the intervention of the courts, such sale may be made upon the order of the circuit court or county judge. Ibid.

The proceedings may be either in term or vacation, and the order shall be made upon the petition of the executor or administrator with the will annexed. In all cases the re-

quirements of the will shall be followed. Notice shall be given to all persons interested in the real estate to sell which application is made in the same manner as provided by law for sales of real estate by executors and administrators in other cases.

2418. (1921.) Sales to pay debts.—

Ib., Sec. 4.

1. Upon Exhaustion or Insufficiency or Personal Property.—When an estate is solvent and the debts and charges due and owing by an intestate estate, or by a testate estate where sufficient provision is not made for them, or by a testate estate where there is no power of sale of realty under the will for the payment of debts, and charges shall exceed the value of the personal estate, and the personal estate shall have been exhausted or is insufficient to pay the debts and charges, a sale may be had of so much of the real estate as shall be sufficient to pay the amount due over and above the proceeds of the personal estate or its value, with incidental charges of sales.

Ib., Sec. 5.

2. The proceedings may be had by petition before the circuit court or county judge, either in vacation or term time, and shall be as follows: The executor or administrator shall file his petition, under oath, setting up the facts which authorize the sale, and upon the same being established to the satisfaction of the court and upon his filing under oath a schedule of the debts as near as he can ascertain after diligent inquiry, showing the amount of the debts, to whom and when due, and the nature of the evidence by which they are established, a sale may be ordered of the portion of the real estate necessary to accomplish the purposes stated. If, however, any person interested in the estate shall at any time before the sale day, and after notice to the executor or administrator, show to the court that it is to the interest of the estate that any portion of the real estate should be sold in preference to that ordered sold, the court may revoke its original order and direct a sale of such other portion of the estate as it deems best.

3. In Preference to Personalty.—When the estate is solvent and it shall become necessary to sell any portion of the estate, real or personal, to pay the debts and charges lawfully due and owing by an intestate estate, or by a testate estate where sufficient provision is not made by the will of the testator, or where there is no power of sale under the will of the testator, or where there is no power of sale under the will of real estate, to pay said debts and charges, a sale may be had of as much of the real estate as may be necessary for that purpose instead of personal estate, if it shall ap-

pear to the court that the sale of the said real estate in lieu of the personal estate will be most for the benefit of said estate; and the court in all cases where such payments cannot be made, either in whole or in part, from sales of the personal estate without prejudice to the parties interested in the estate, may, in its discretion, order sales of such part of the real estate in lieu of the personal estate or parts thereof as they may deem to be for the general interests of the parties interested. Such sales may be had upon the order of the circuit court or county judge, which order may be in term time or vacation, upon petition filed and signed by the executor or administrator, and such of the parties interested, including creditors, as are not infants, and including the husbands of such as are married women. The petition shall set forth in detail a schedule of the debts and charges, showing their amount, to whom and when due, and the nature of evidence by which they are established, as well as the facts from which it is thought that the sale, as prayed for, is for the benefit of the estate; it shall also set forth the names of the heirs, devisees or legatees, stating their age, and which are infants.

Upon the filing of such petition it shall be the duty of the court forthwith to appoint a discreet guardian, not of kin to the petitioners, for such as are infants, and to name an early day upon which the guardian shall file, under oath, an answer in reference to the matters stated in the petition, at which or any subsequent day, and after the coming in of the answer and examination of the parties, and such evidence as may be offered or the court may order taken, the court shall make an order authorizing or refusing to authorize the sale prayed for in the petition. In the event that some of the parties interested in the estate desire the sale of such real estate in preference to the personal and others do not, the proceedings may be instituted by the executor, together with those who desire the sale, and the sale, if so decreed by the court, may be made after notice to the remaining parties in interest, and the appointment of a guardian for infants as heretofore provided. In this case a day shall be named for the filing of the answers by the defendant and a hearing shall be had at such time as the court may direct. If parties fail to file answers, the court may make such order as it deems proper. If any party interested be a non-resident, notice shall be given as prescribed in cases of sales under defective wills. (Section 2417.)

Jurisdiction.—Allegation of solvency not essential to county judge's jurisdiction.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163; Ib., 18 Fla., 531. Nor that estate is an intestate one.—Ib. Sufficiency of evidence of debt before county judge not jurisdictional.—Ib. No jurisdiction to authorize mortgage. Wilson v. Fridenberg, 21 Fla., 386; Ib., 22 Fla., 114. Court must conform to

section so far as to acquire jurisdiction of subject matter and parties.—Price v. Winter, 15 Fla., 66.

Proceedings.—Petition in solvent estate alleges exhaustion of personalty; in insolvent estate suggests insolvency.—Deans v. Wilcoxen, 18 Fla., 531. Sufficiency of allegation of exhaustion in county judge's court.—Ib., 25 Fla., 980; 7 So. Rep. 163. Sufficiency of allegation of debt.—Deans v. Wilcoxen, 18 Fla., 531. Extinguishment of debt when not determinable by circuit court on certiorari.—Ib. Claim not stale.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163. Order of sale affirms debt's validity.—Ib. When order refused for claims of administrator and sureties.—Ib. Service unnecessary on infant heir.—Price v. Winter, 15 Fla., 66; but necessary on his guardian ad litem.—Ib. Service on general guardian sufficient if court hear him on infant's behalf.—Ib. Administrator obtaining order of sale is necessary party to bill by holders of tax deed to enjoin sale.—Bevil v. Smith, 25 Fla., 209; 6 So. Rep. 62.

Nov. 17, 1829. Sec. 18.

2419. (1922.) Of estates of less value than $300.—Whenever any lands shall descend from any person dying intestate to two or more heirs, any one of whom shall be an infant, feme covert, non compos mentis or beyond the sea, and each share shall not exceed the value of three hundred dollars in the opinion of the circuit court of the county within which such lands or the greater quantity of them lie, it may direct the sale of said lands and the distribution of the money arising therefrom according to the right of each claimant.

Before such order shall be made each heir shall be duly notified to show cause, if any he can, against such sale. If he be a resident of the State, he shall be personally served with notice, and if he be a non-resident, notice directed to all parties in interest shall be published, as provided in case of sale under defective wills. (Section 2417.)

Ch. 2028, Sec. 1, Feb. 14, 1874.

2420. (1923.) Sale of land in different counties.—In all cases where lands are situated in a different county or counties, circuit or circuits from that in which letters testamentary or of administration were granted, the judge of the circuit court of the county in which such letters testamentary or of administration were granted, may, upon the application of an executor or administrator by petition or otherwise, stating that the sale of such land or lands so situated out of said county or circuit is necessary or most beneficial for the purpose of paying debts of the testator or intestate, authorize such executor or administrator to sell and dispose of such land or lands so lying and being situated in any other county or counties, circuit or circuits, in such manner and upon such notice as such court in its order may direct.

Notice of such intended application shall be published once a week for four consecutive weeks in a newspaper published in the county in which such letters were granted, stating the time and place when and where such application will

be made, and giving a brief description of the land or lands for the sale of which such application is to be made. And at said time any person interested may, in his own behalf, or in behalf of any minor, appear before said court and make in writing such objection to such sale or the sale of any part of such land or lands as he may deem fit; and the court shall hear and consider such objections, and order testimony, if deemed proper, in its discretion, to be taken concerning the same, and shall grant or refuse such application according as in its judgment the interests of the estate or creditors or heirs, devisees or minors shall require.

The application above provided for may include lands in different counties and circuits.

2421. (1924.) Sale of real estate of infants.—When any executor or administrator shall have the control or management of any real estate the property of an infant and shall think it necessary or expedient to sell the same, it shall and may be lawful for the said executor or administrator to apply either in term time or vacation by petition to the county judge or judge of the circuit court for the county in which said real estate may be situated, for authority to sell the same, and if the prayer of said petition shall appear to the said judge reasonable and just, he may authorize said executor or administrator to sell said real estate under such conditions as the interests of said infant may, in the opinion of the said judge, seem to require. Such authority shall not be granted unless the executor or administrator shall have given previous notice published once a week for four successive weeks, in a newspaper published in the county where the application is made, of his intention to make application to said judge for authority to sell the same, setting forth in said notice the time and place and to what judge said application will be made. If the lands lie in more counties than one, application shall be made in each county.

Ch. 881, Secs. 1, 2, Jan. 23, 1851.

Sale void unless court so proceed as to obtain jurisdiction.—Coy v. Downie, 14 Fla., 544.

2422. (1925.) Directions in order of sale.—

1. Authorizing Deed To Be Made.—The judge in every order granting leave or giving authority to the executor or administrator to sell the land or lands of a decedent shall authorize the commissioner provided for in Section 2423 to execute and deliver to the purchaser thereof a deed conveying said land or lands to the purchaser thereof and a deed so executed and delivered shall fully vest in said purchaser the fee simple title to said land or lands, or the full right, title

and interest of the estate, and of the heirs, devisees or minors therein or thereto.

Execution of imperfect deed and lapse of nine years will not abrogate commissioner's authority to execute perfect deed.—Moody v. Hamilton, 22 Fla. 298.

2. Requiring Additional Bond.—The judge shall, in every order or decree authorizing such sale, require that the executor or administrator shall execute and file in the court a bond, with surety or sureties, to be approved by the court or judge, in such penalty as the court or judge shall fix, conditioned to duly account for the same according to law.

This bond is subsidiary; original bond must be exhausted before resort to it.—Hart v. Stribling, 21 Fla., 136.

Order of sale not of itself evidence of jurisdiction of court making same. —Sloan v. Sloan, 25 Fla., 53; 5 So. Rep. 603. County court under constitution 1868 one of special and limited jurisdiction.—Ib. Additional bond required. —Bushnell v. Krum, 32 Fla., 62; 13 So. Rep. 591.

PROCEEDINGS AFTER ORDER OF SALE.

Ch. 1732, Sec. 7, Feb. 16, 1870.

2423. (1926.) Sale to be by commissioner.—Sales of real estate of decedents under order of court shall be made by a commissioner to be appointed by the court. Fees for the service shall be allowed by the court, not to exceed six dollars for each day employed in the sale, and six dollars for each deed executed, to be taxed as the court shall direct.

Sale is judicial, and not open to collateral inquiry, if court have jurisdiction.—Price v. Winter, 15 Fla., 66. Bidders at sale.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163.

Ibid.

2424. (1927.) Notice of sale.—Such sales, except when permitted by the order of the court to be private, shall be at public outcry, after four weeks' notice of the time and place and terms of sale; the notice shall also contain a description of the property to be sold.

Such notice shall be given by publication once each week for four successive weeks in a newspaper published in the county where the property lies. If, however, other notice is directed to be given by the will, then the notice required by the will, instead of the notice required by this section, shall be given.

Ib., Sec. 8.

2425. (1928.) Adjournment of sale.—If in any case the public sales authorized hereinbefore cannot take place without a sacrifice of the interests involved, in the opinion of the commissioner, he shall be authorized to adjourn the same, and after giving the notice hereinbefore required, may have the sale at any subsequent day.

2426. (1929.) Terms of sale.—Such sales shall be for cash unless the will shall otherwise direct, or unless the court in its order shall permit a sale on credit. If a sale on credit be permitted, the terms of the credit and security to be given shall be fixed in the order.

2427. (1930.) When executor or administrator may purchase.—Any executor or administrator having an interest in the estate which he represents, either in his own right or in the right of his wife or infant child, as creditor, devisee, legatee or heir-at-law, may at any public sale of the real or personal property of his testator or intestate made as provided by law under the order of the circuit court or county judge, become a bidder therefor; and if such executor or administrator is the highest bidder at such sale, it shall be lawful for him to purchase the same, and said property shall be struck off and sold to such executor or administrator as the highest bidder therefor. Ch. 3255, Sec. 1, Feb. 28 1881.

2428. (1931.) Report of sale, and confirmation.—

1. Generally.—After every sale of the land of a decedent under order of the court a report thereof shall be made by the commissioner to the court, and upon its being satisfied there has been no improper conduct on the part of the commissioner or upon the part of the executor or administrator, and after requiring from each of them an oath that they are not, directly or indirectly, the purchaser (except as executor or administrator may be permitted by the preceding section), and upon its being made to appear that the requirements of the order as to the sale have been complied with, and that the property has brought a fair price, the judge shall make an order confirming the sale, and shall direct a deed of conveyance to be executed to the purchaser by the commissioner, and its delivery to the purchaser upon his compliance with the terms of the sale. Ch. 1732, Sec. 7, Feb. 16, 1870.

No title in bidder until confirmation.—Knox v. Spratt, 19 Fla., 817. No presumption that court or commissioner will proceed illegally.—Deans v. Wilcoxen, 25 Fla., 980; 7 So. Rep. 163.

2. When the Executor or Administrator Is Purchaser.—Upon the filing of the report of the commissioner that a sale has been made to an executor or administrator, the court shall cause a notice to show cause why the sale should not be confirmed to be served personally, at least ten days before the sale is confirmed, upon the heirs, devisees, legatees and distributees, when the estate is solvent, and upon the creditors who have filed their claims, or their attorneys of record, when the estate has been declared insolvent, or shall cause a Ch. 3255, Acts 1881, Sec. 2.

notice to be published once each week for four successive weeks in some newspaper published in the county where such sale is made, directed to all persons interested; and if on the day named sufficient cause be not shown to the contrary, and the court shall be satisfied that the facts permitting the executor or administrator to purchase, as provided in Section 2427, exist, and that a compliance with the other requirements of Section 2427 also exists, it shall make an order confirming the sale and directing the execution of a deed.

2429. (1932.) Proceeds of sale, disposition of.—Funds arising from such sales, and any securities given for credit, shall be delivered by the commissioner to the executor or administrator, upon the order of the court, after the administrator or executor shall have given the bond required.

(For failure of commissioner to turn over the money or securities: See Section 3492.)

Representative is trustee, and statute of limitations does not run against claim of creditor for pro rata share.—McDonald v. Bogue, 14 Fla., 363. Widow's interest in proceeds must be paid to her, not invested for her benefit.—Osborne v. Van Horn, 2 Fla., 360. Executor cannot hold property purchased at his own sale.—Price v. Winter, 15 Fla., 66.

2430. (1933.) Costs of application for sale.—The costs of such application shall be paid out of the proceeds of the land sold, or out of any money in the hands of the executor or administrator belonging to the estate.

Nov. 20, 1829, Secs. 1 and 2.

2431. (1934.) Sales in pursuance of contracts of decedents.—In all cases where written agreements or contracts shall have been made for the conveyance of real estate in this State, and the person agreeing or contracting to make such conveyance shall have died before the execution of such conveyance, the executor or administrator of such person may execute such conveyance, according to the rules and forms prescribed by law for the conveyance of real estate in this State.

Such conveyance shall have the same force and effect, both in law and equity, as other conveyances of real estate made under and in pursuance of the laws of this State.

CHAPTER VII.

CONTRIBUTION AMONG LEGATEES, ETC.

2432. (1935.) Contribution and lien.—Whenever any estate, real or personal, bequeathed, devised or apportioned to any person, shall be sold for the payment of the debts of the estate, all other legatees, devisees or heirs shall contribute their average or proportionate part of such debt to the person from whom such estate, real or personal, shall be thus taken away; and in case of sales under execution or lien, the lien shall be preserved in favor of the party from whom the estate is taken and sold as aforesaid, against the other parties, upon the property derived by them from the estate, to the extent of their proportionate part of the debt.

Ch. 1732, Sec. 10, Feb. 16, 1870.

CHAPTER VIII.

INVESTMENTS OF MONEYS OF MINORS.

2433. (1936.) Provision for.—Executors and administrators may, by leave of the court, retain in their possession the money of any minor, paying for the same lawful interest, or shall, under the direction of the court, put out the moneys of minors at interest, upon such mortgage security, or on United States or State bonds, or stocks, as said court shall allow, and if such security be taken bona fide and without fraud, and shall prove insufficient, it shall be the loss of the minor; but if no good security can be found on which to put out the said money at interest, the said executor or administrator shall only be responsible for the principal; and at the end of each year the interest due, if not paid, shall be made principal; and when the executor or administrator retains the money on interest himself, the same rule shall be observed, the interest being added to the principal annually; but executors and administrators shall not be liable to pay interest, except on the surplus of the estate of the deceased remaining in their hands and unemployed as aforesaid, after the settlement of their accounts.

Nov. 20, 1828, Sec. 35; Ch. 1560, Sec. 1, Dec. 13, 1866.

This section not restricted to minor's monies; it embraces all estate money coming in during administration.—Moore v. Felkel, 7 Fla., 44; Moore v. Hamilton, 4 Fla., 112. On final adjustment, executors and administrators must pay minor's share to guardian; they cannot invest it.—Ib. Loans on personal security are made at representative's risk.—Moore v. Felkel, 7 Fla.,

44; Moore v. Hamilton, 4 Fla., 112. Investments in the authorized securities are to be made only on judge's approval.—Sanderson v. Sanderson, 17 Fla., 820. Otherwise heir may reject them.—Ib. Rule of charging representatives in such cases.—Ib. Representative charged with interest on bank deposit unless no security can be found.—Eppinger v. Canepa, 20 Fla., 262. Minor's money bears interest, though he have no guardian.—Sanderson v. Sanderson, 20 Fla., 292. Method of accounting.—Sherrell v. Sheppard, 19 Fla., 300; Young v. McKinne, 5 Fla., 542. Rate of interest on annual balances.—Moore v. Felkel, 7 Fla., 44.

CHAPTER IX.

DISTRIBUTION AFTER PAYMENT OF DEBTS AND LEGACIES.

Nov. 20, 1828, Sec. 49.

2434. (1938.) According to law of descents.—After all debts and legacies have been paid, the property remaining in the hands of the executor or administrator shall be distributed according to the law regulating descents.

CHAPTER X.

INSOLVENT ESTATES.

ARTICLE 1.—Settlement of by county judge. Sections.....2435-2440
2.—Settlement of by circuit court. Section..... 2441
3.—Provisions applicable to settlements by either court. Sections.....2442-2447

ARTICLE 1.

SETTLEMENT BY COUNTY JUDGE.

Ch. 527, Sec. 1, Jan. 8, 1853. Revised.

2435. (1939.) Suggestion of insolvency and filing of schedule.—When any executor or administrator in this State shall believe the estate committed to his charge to be indebted to an amount greater than the value thereof, it shall be the duty of such executor or administrator to file a written suggestion, on oath, of such insolvency, in the office of the county judge of the county in which letters testamentary or of administration shall have been granted, and shall contain: First, a true and perfect schedule of all the assets of every kind and the estimated value of each item thereof, and the amount of money in his hands belonging to the estate;

second, a full, itemized statement of the indebtedness of said estate, and of all claims which have been presented to him or have come to his knowledge, the character and amount of each claim, and the name and postoffice address of each claimant, if known.

The method prescribed for ascertaining the insolvency is exclusive.—Holliday v. McKinne, 22 Fla., 153.

2436. (1940.) Notice to creditors.—Upon the filing of the written suggestion mentioned in the above section, the said judge shall give notice, once a month in a newspaper published in the county, and by written notice at the court house door in the county, to all persons having claims against said estate to appear and file the same with him on or before a day to be specified in said notice, not less than six nor more than nine months, and by mailing copies of said notice to all creditors whose postoffice addresses are stated in the suggestion. Ib., Sec. 2.

2437. (1941.) Verification and filing of claims.—Creditors shall file their claims on or before the day fixed in the said notice, and such claims shall be authenticated when filed in the manner prescribed by law; but if not so authenticated, they may be proved, to the satisfaction of the judge, at any time before the final settlement of the estate. Ibid.

2438. (1942.) Distribution of estate among creditors.—After the expiration of the time fixed in said notice, the judge shall, after payment of the costs of the administration, make distribution of said estate among the creditors pro rata (with the exception of the preferences provided for in Section 2404), which distribution shall be conclusive, unless reversed upon appeal, as in other cases; and shall order the executor or administrator to make payment in a fixed time to the creditors, in accordance with said pro rata distribution. Ibid.

Distribution and award to judgment creditor is bar to suit on administrator's bond.—State v. Crawford, 23 Fla., 289; 2 So. Rep. 371. If sheriff sell decedent's property on execution after notification of the suggestion of insolvency the proceeds are assets for pro rata distribution; if payment be made to plaintiff, restitution ordered in a summary way.—Mathews v. Williams, 13 Fla., 615.

2439. Contest by creditors, etc.—Any one or more creditors or other persons interested in said estate may answer said suggestion, denying the insolvency of said estate, and the issue thus made shall be tried by the county judge in the same manner and form, as near as the same can be done, as trials of objections to accounts of executors and administra-

tors. Only one issue of this kind shall be tried and determined, and one such determination shall be a bar to other proceedings of the same kind by any other creditor.

2440. Result of determination and costs.—If the result shall be against the executor or administrator, the suggestion shall be dismissed, at his costs; but if in his favor, the costs shall be taxed against the contesting creditor, or paid out of the estate, as the court may direct.

Under this section lands do not go into possession of administrator but remain in possession of the heir until administrator takes possession under order of court.—Rose v. Withers, 39 Fla., 460; 22 So. Rep. 724. Administrator cannot maintain ejectment on proof of title and possession of his intestate.—Ib.

ARTICLE 2.

SETTLEMENT BY THE CIRCUIT COURT.

Ib., Sec. 5.

2441. (1943.) In cases of estates exceeding $500.—In all cases where the estate of an intestate or testator shall exceed the gross sum of five hundred dollars, it shall be lawful for the executor or administrator thereof to file his bill in chancery suggesting the probable insolvency of such estate; and the judge of said court may order publication to be made, requiring claims to be filed in said court on or before a time to be specified in said order; and the said bill shall contain, as near as may be, a true and perfect statement of said estate; and the said court shall proceed to settle such estate and pay the claims pro rata, as county judges are required to do. Such bill shall conform in its statements as near as may be to the suggestion for same purpose before the county judge, and the same practice shall prevail and creditors of the estate shall have the same rights and remedies.

Circuit court should decline jurisdiction after suggestion filed under Section 2435, in absence of special reasons.—Ritch v. Bellamy, 14 Fla., 537. After suggestion and notice under Section 2435, creditor may enjoin proceedings at law by another creditor on judgment obtained after suggestion.—Scarlett v. Hicks, 13 Fla., 314.. Court can enjoin without removing administration to its jurisdiction.—Ib. Legal representative is necessary party.—Ib.

ARTICLE 3.

PROVISIONS APPLICABLE TO SETTLEMENT BY EITHER COURT.

2442. Contests of claims.—

1. By Executors or Administrators.—In all cases where the claims against said estate are denied or contested by the executor or administrator, such claimant may prosecute a suit at law or in equity for the establishment of the same. Upon the rendition of a judgment or decree for said claim, the same shall be filed with the said judge for pro rata payment, as other claims are required to be filed; but uncontested or admitted claims against said estate shall not be sued or enforced otherwise than as provided for in this section. Ib., Sec. 3.

2. By Other Creditors.—Each claimant or creditor of such insolvent estate shall have a right to contest the claim or demand against said estate of any other claimant or creditor, notwithstanding the same shall have been uncontested or admitted by the executor or administrator. Ib., Sec. 7.

Section does not expressly prohibit suits against representative on uncontested and admitted claim. Such may be established by suit, but enforced according to this chapter.—Wilson v. Broward, 15 Fla., 587.

2443. (1945.) Priorities of creditors.—After the payment of expenses of administration, the estate shall be applied to the payment of creditors in the order provided by Section 2404. The appointment of a creditor as executor or administrator of an estate shall not entitle him to prefer his debt to the exclusion of other demands against said estate, but his debt shall be paid with other debts of the same class. Feb. 15, 1834, Sec. 2.

Right of retainers limited to solvent estates.—Sealey v. Thomas, 6 Fla., 25.

2444. (1946.) Assets to remain with executor or administrator.—All assets, real and personal, belonging to an insolvent estate shall, after the suggestion of insolvency, remain in the hands of the executor or administrator until the pro rata distribution of the assets is ordered by the court; and the court shall, if in its judgment it is necessary, when insolvency is suggested, require security, or additional security, from the executor or administrator for the same. Ch. 3016, Acts 1877, Sec. 1.

2445. (1947.) The sale of lands.—Lands, tenements or hereditaments belonging to an insolvent estate after the suggestion of the insolvency shall be sold under the same proceeding now required to sell lands belonging to a solvent estate to pay debts. Ib., Sec. 2.

Ch. 527, Acts 1853, Sec. 4.

2446. (1948.) False suggestion of insolvency.—If the executor or administrator fraudulently file a suggestion of insolvency, knowing that the said estate is not insolvent, he shall personally pay all costs occasioned by such suggestion.

Ibid.

2447. (1949.) Proceedings if estate be found solvent.—If the estate be found to be solvent, it shall be finally settled as a solvent estate; and after payment of all the debts, the residue of the estate, if any remain, shall be distributed to those entitled by law.

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